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ABSTRACT

This book takes an interpretative look at a common phrase in American educational equity lexicon, "the right to education." It addresses the educational disputes and issues of policy, procedure, and popular will that are associated with this phrase. Interpretation of the phrase is based on a focus on the everyday situations in which a right to education is assumed through: (1) analysis of ordinary language; and (2) existential-phenomenological descriptions of the subjective experience. Following the introduction, chapter 2 sketches seven typical scenarios in which the assertion of the right to education seems to make sense. These scenarios constitute the starting point and the data for a contextual analysis of language and intention. The following chapters draw out a multidimensional portrait of what we affect when we claim "a right to education." The conclusion discusses whether the phrase helps or hinders the advancement of justice in education. (Contains 62 references.) (LMI)

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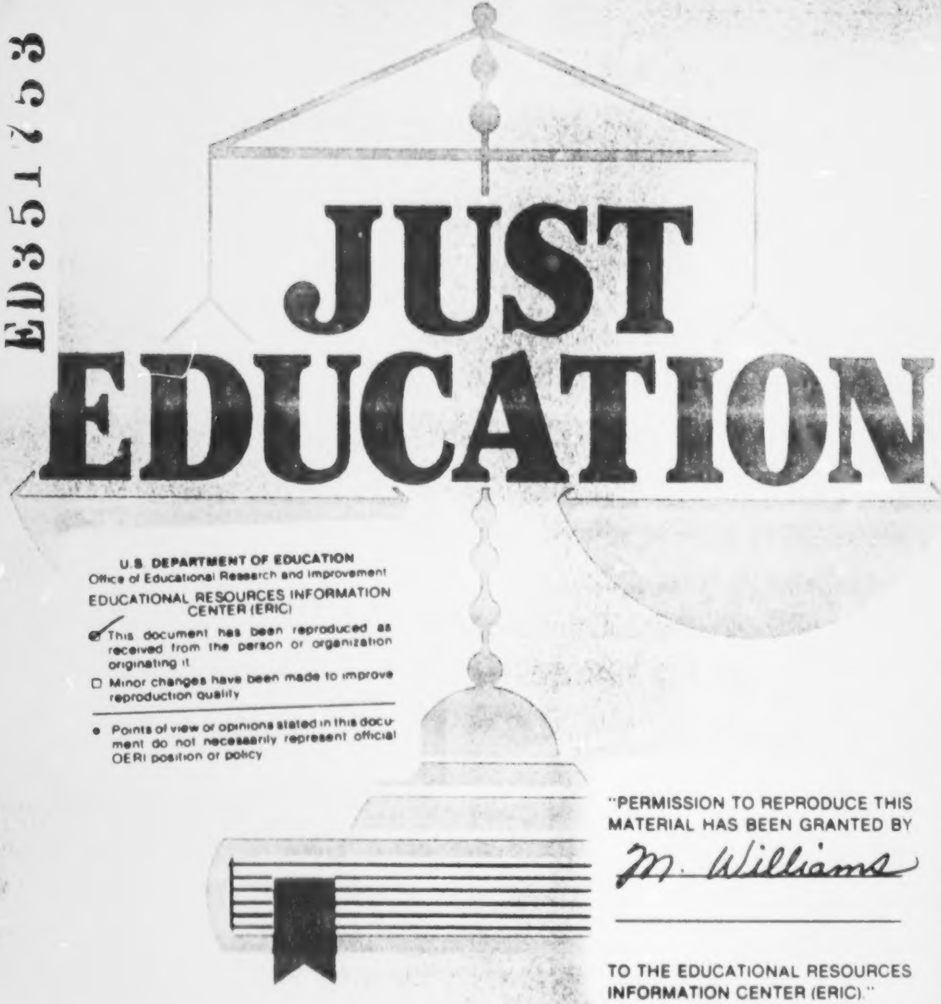

# JUST EDUCATION

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## The Right to Education in Context and Conversation

*by Barbara Senkowski Stengel*

*Foreword by Walter P. Krolikowski, S.J.*

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# JUST EDUCATION

## The Right to Education in Context and Conversation

Values & Ethics Series, Volume 3

*by Barbara Senkowski Stengel*

*Foreword by Walter P. Krolikowski, S.J.*

*Just Education* is an interpretive look at the use of a single pivotal phrase in the American educational equity lexicon, "the right to education." Stengel begins by sketching seven typical scenarios in which the assertion of the right to education seems to make sense. While these scenarios are hypothetical constructions, they are not merely imagined or possible uses. Each is loosely based on some real contemporary situation. These scenarios constitute the starting point and the data for Stengel's contextual analysis of language and intention. She proceeds to draw out a multi-dimensional portrait of what we effect when we claim "a right to education." She concludes with a discussion of whether the phrase helps or hinders the advancement of justice in education.

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# Just Education

Values and Ethics Series, Volume 3

# Just Education

## The Right to Education in Context and Conversation

Barbara Senkowski Stengel

Loyola University Press
Chicago

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# Foreword

Just when it seems that everyone can breathe easier, a dead issue resurfaces. Free universal education, at least in the West, has affirmed the right of children to a common education, the duty of society to provide it, and the compliance of those concerned; it gives a sense of well-being, a sense of a difficult task successfully carried out.

Yet society is aware that all is not well in education. Could it be that the solidly established order is crumbling? That opponents to universal education—long dead—are once again alive? Are we doing what we should for children in need of an education? A few examples of difficulties from far and near may prove helpful and thought-provoking.

A recent article by Peter Moock and Dean Jamison details the educational problems encountered in sub-Saharan Africa. In the midst of a growing population, the annual rate of growth in enrollments of elementary school children has declined from 8.4 percent during 1970–80 to 2.9 percent over 1980–83. The problem extends beyond numbers, though. The quality of instruction suffers. There are inadequate funds for textbooks, teachers' guides, school feeding and health programs, and examination systems. Worse, the funds that do exist are used in ways that will probably not greatly affect the quality of instruction in any positive way. Reduction in class size, better training of teachers, the construction of high-quality buildings, television, and computers consume large parts of available monies without, Moock and Jamison contend, a proportionate rise in quality. All of this is compounded by the explosive rate of growth in higher education. University enrollments in sub-Saharan Africa have grown "from 21,000 in 1960 to more than 430,000 in 1983," and the cost per university student in a land of extremely limited funds is sixty times that of the pupil in primary school.[1]

In Great Britain the acknowledged right to education of children is often compromised by an extremely tight budget that forces the closing of schools or at least the discontinuation of some expensive programs such as the sixth-form, the college preparatory curriculum of British secondary schools. Article 39 of the Education Act of 1944 gives the local education authority the right to enjoin school children under eight to walk to school, if the walking distance along an "available" route is less that two miles, and older children, if the distance is less than three. As a report in the October 17, 1986, *London Times* indicates: "A route to be 'available' had to be a route along which a child accompanied as necessary could walk with reasonable safety to school. It did not fail to qualify as 'available' because of dangers which would arise if the child was unaccompanied."

These examples, great and small, concretely indicate some restrictions of the abstract right to education. What of the school situation in the United States? Africa and Great Britain are far away, and we are not they. But far away is not necessarily different or, if different, not necessarily better. A few chastening examples are in order.

There is a notable trend for American male minority students not to take advantage of the educational opportunities offered them. Rights not taken advantage of sometimes turn out to be purely abstract rights. Yet it may be a shade too easy to accuse potential students of not taking advantage of their "rights." When dropout rates reach 50 percent in some large cities, the blame cannot be laid completely on the shoulders of the dropout.

There are also large numbers of students whose right to education is not being respected. Lawyers representing handicapped children and their parents tell horror story after horror story. Consider three typical stories from the files of a lawyer who represents handicapped children. (1) A child with a learning disorder is approaching the end of the eighth grade. She and her parents are told that there are no programs at the high school level in the district even though such programs are clearly mandated by both the state of Illinois and federal law. (2) A child, partially blind and partially deaf, has cerebral palsy and is somewhat retarded. The school district places the child in a program for the retarded but does nothing about addressing the child's sight and hearing problems. (3) An eight-year-old African-American girl is referred for testing but is not scheduled until she is sixteen in spite of a law requiring testing within sixty days. By the time she is finally tested, the exam is considered outdated and is no longer used because it discriminates against African-Americans.

The reorganization of rural schools to equalize educational opportunities is proceeding at a snail's pace, especially in the eastern part of the United States. Compensatory education for children who do not know English or are culturally deprived is at best spotty. In sum, we are proclaiming that all children have a right to education while, in fact, they are being poorly educated. What, then, do we mean precisely when we say that children have such a right?

Barbara Senkowski Stengel's *Just Education: The Right to Education in Context and Conversation* offers assistance not only to professional educators but also to legislators—if they will only read and ponder—and to the educated public, which understands very well the relation between education and community well-being.

First, Stengel insists on the public nature of our conversations regarding justice and education. We are not simply talking about personal and idiosyncratic desires and feelings. Granted, the atomic individual is interesting, and there will always be a place for autobiography of a confessional nature. But the related individual is the truly interesting person, and the problems of the person-in-relation are those we ought most be concerned with.

Second, Stengel refuses to use a simple-minded, one-dimensional approach. She addresses epistemological, sociological, and political dimensions. There are outside factors where language and thought function as political tools, objective standards, and transforming devices. Rights talk takes place in the agora of common concerns. Rights talk is world-building in the sense that it tries to help people come to some individual self-realization. Rights talk is the crossroad where the atomic individual comes to terms with other coexistents in an attempt to grow in a common universe.

Third, Stengel is not afraid to provide an analysis that is serviceable rather than intellectually elegant. Elegance is the peculiar realm of the mathematical proof. Human social existence includes the unique as well as the typical, the refractory as well as the manipulable, the surd and the absurd as well as the reasonable. Computer logic goes a long way; it does not go the whole way. Stengel pushes the abstract a good distance toward the practical, yet she is wise enough not to think that any analysis can go all the way.

She is in a noble tradition. She aligns herself with the later Ludwig Wittgenstein in his search for a depth grammar, with G. H. Mead in his insight into the person as relational, with Daniel Maguire in his passion for political justice, and with

Alfred Schutz in his phenomenological analysis. She builds a response model for ethical decision making that derives from the theories of H. Richard Niebuhr and the John Dewey of the 1932 *Ethics*.

Finally, she is on a convergent path with Stephen Toulmin and Albert R. Jonsen. In their recent book, *The Abuse of Casuistry: A History of Moral Reasoning,*[2] they attempt to reinstate what has been under a cloud for the past three centuries. Casuistry may be coming back into its own. It has become the analysis of concrete cases that takes into account not only the need to justify what one does by appealing to commonly held principles but also the need to acknowledge the particularities of concrete cases that can fit under a principle but can never be derived from it. What began several years ago as the case-study method at Harvard University may now be ready to rejoin the wider and older stream of casuistry. One can only hope for a similar joining of the intellectual tradition with the moral tradition that sees prudence as the virtue most needed by the person of action.

Barbara Stengel has written an important book that deserves a wide audience. Everyone who reads *Just Education* should, as a result, be able to think more clearly about the great issues of education that we, as a community dedicated to a more human existence, see as urgent and pressing.

*Walter P. Krolikowski, S. J.*
*Loyola University of Chicago*

## Notes

[1] Peter R. Moock and Dean T. Jamison, "Educational Development in Sub-Saharan Africa," *Finance & Development* 25 (1988): 22–24.

[2] Berkeley: University of California Press, 1988.

# Preface

To consider civil rights in abstraction from concrete conditions is really to be unaware in a total way of civil rights at all.[1]

Barbara Jordan

This book asks just one question: What does the phrase *right to education* mean? As Barbara Jordan suggests above, to answer this question in abstract terms is to offer no answer at all. After considering a host of prior questions—that is, questions that must be answered if the main question is to be answered—potential answers, probable qualifications, and perspectives from which the question may be viewed, I offer the modest conclusion that the phrase conveys meaning only in concrete contexts. It is used as a verbal trump card in contexts that may be characterized as social, political, public-rational,[2] and educational, by individuals or groups who feel that their integrity as persons who matter is being somehow threatened. The specific nature of the threat—the actual need or desire that is left unsatisfied—can only be determined and defused by participants in the situation.

To say that the phrase *right to education* has no specifiable meaning out of context is not to suggest that there is no value in speaking these particular words. The phrase may function in a general way as a slogan. When used as such, it can inspire, motivate, or simply generate awareness of the possibility of injustice in education. It is, in other words, a heuristic device, helping us to see our way toward the construction of just education.

*Barbara Senkowski Stengel*
*Millersville, Pennsylvania*
*1990*

## Notes

1 Barbara Jordan, "Individual Rights, Social Responsibility," in *Rights and Responsibilities* (Los Angeles: University of Southern California Press, 1980), p. 16.

2 As is explained more fully in chapter 5, public-rational refers to contexts in which public, impersonal reasons are valued over private, personal ones and in which rational considerations are given preference over emotional ones.

# 1

# Introduction

Just education, the question of the justice of our educational arrangements and activities, has slipped from the limelight. For more than a decade little attention has been paid in the media and in government to individual rights in the educational arena. Equity has been replaced by excellence.

It is not very surprising that phrases such as *right to education* have been dropped from specifically governmental discourse during two conservative Republican presidencies. There has been, across the land, a return to a peculiar version of the conservative conscience. This version is held together by a competitive structure, an emphasis on individual initiative, and a conception of excellence defined as dominating one's competitors. Notions of equity are subsumed into an overall presumption that winners emerge fairly. In the form of various blue-ribbon committees, we have determined that our educational system is not effective enough, while in the political arena we don't seem to even care anymore whether or not it is fair enough.

Yet under the political surface—at the level where issues actually arise—individuals are requesting, clamoring for, and even demanding what they take to be their due. If the phrase *right to education* isn't heard in congressional hearings, or at governors' conferences, it is heard at scenes of local educational controversy. As long as national prosperity continues and the conservative conscience is in control, that is where talk of right to education will stay. However, any loosening of the hold that conservatives have on public life will allow such questions to gain attention once more. Indeed, the events of late 1990—signs of recession, election trends, and defense commitments abroad—suggest that cracks have already appeared in the images of effectiveness, efficiency, excellence, and competitive success carefully constructed in the Reagan and Bush presidencies. How will we interpret and respond to claims of educational rights? What will we do when the justice of our educational institutions is questioned by those—women, poor, handicapped, newly arrived immigrants, minorities, AIDS victims—who still perceive themselves to be marginalized by the structure, and even by the purposes, of those very institutions?

This is a book about the phrase *right to education*. Moreover, it is a book that addresses the educational disputes—real issues of policy, procedure, and popular will—that are associated with this phrase. It is about the educators' and policymakers' attempts to respond to claims of educational rights and the sense of educational justice which is, quite literally, constructed by the claims of educational rights and someone's response to those claims.

## Rights Talk

At least since John Stuart Mill, there has been a general acceptance of the view that how and what one thinks about the rights of others can be equated with how and what one thinks about the concept of justice. This view, though widely held, is highly debatable. It is not clear, for example, whether a calculus of various rights—whether you can, for example, take *x*'s right to an education, *y*'s right to reasonable taxation and representation, and *z*'s right to an orderly school and learning environment, add them up, weigh them, and calculate who ought to "win"—will reveal the just and fitting thing to do. It is not even clear whether discussions regarding individual rights can resolve or offer solutions to problems of justice.

What is clear is that assertions of individual rights often emerge when persons confront problems of justice. Contemporary questions about what is the right or just thing to do in a particular educational context are very often debated in terms of one party or another's right to education. This phrase has regularly been used in discussion of such diverse issues as education for the handicapped, equal educational opportunity for poor and minorities, bilingual education, school finance, and public support of private and parochial education. In recent months, the phrase has appeared with alarming frequency in reference to children with AIDS. For these and other reasons, we must understand exactly what a right to education means.

Unfortunately, the meaning of a right to education is elusive and ambiguous. Those who have sought to clarify its meaning have, for the most part, restricted their analyses within the limits of logical and semantical discussion that leaves us with a truncated—and wholly unsatisfactory—understanding of the expression. This, in turn, severely limits our ability to use the phrase to illuminate concrete problems of educational justice.

I propose to enhance our understanding of this often-used and often-abused phrase by quite literally widening our sights. I suggest utilizing a broad-based mode of analysis that takes into account the context of the right to education. As understanding is increased, so too is the ability to respond appropriately to assertions of such a right.

The quest for the appropriate response is at the heart of this book, though, in order to maintain the focus on the right to education, it will not be discussed in detail until the final chapter. I maintain that ethical action *is* appropriate response.

Just education can only be achieved when decision makers in the educational field respond appropriately to the perceived needs and stated demands of their constituents. Confronted with the assertion of a right to education, what does one do? How does one think or act justly? I offer as a provisional reply that one cannot realistically calculate the importance of one person's right against other competing rights and act solely on the mandate of the most important right. I reject the notion that phrases like *right to education* or similar so-called welfare rights correspond to or mirror a single mandated action, entitlement, or belief. I openly confess that I have no love for the natural law/natural rights theory in general and certainly no sense that there is, in any way, a right to education apart from particular social and legal circumstances. I would be willing to acknowledge the existence of a right to education only as a behavioral function or component of an entire set of social and legal preconditions.

At the same time, I acknowledge that people frequently use the phrase in a meaningful way and are quite frequently understood. Just as frequently, though, they are misunderstood. The listener does not respond in a way that the speaker views as appropriate and/or just. And so there is reason to reexamine our understanding.

If we are to respond appropriately to the person who claims a right to education, and in doing so behave justly, we must accurately interpret the circumstances that compel a response. The very act of uttering such a phrase—*right to education*—places us on alert and signals that certain considerations may arise.

I reiterate that a complete interpretation of the phrase and its use in a given context is not always necessary. In many everyday circumstances, the phrase is implicitly understood. Still, there are certain intractable situations—ongoing controversies not even vaguely settled and novel issues just beginning to be explored—where a thorough interpretation is not only important but essential. This "complete interpretation" is an ongoing social event. We cannot escape it, nor should we want to. In my view, this is the realization of justice.

What will this broad interpretation involve? It will focus on the everyday situation(s) in which a right to education is asserted. It will employ two distinct yet complementary approaches: analysis of ordinary language and description of subjective experience.

Ordinary language analysis determines the meaning of the phrase by examining how the phrase is appropriately used. This involves (1) differentiating the typical uses of the phrase *right to education* and (2) specifying the conditions for the appropriate use of the terminology of a right to education. An existential-phenomenological description supplements the language analysis by determining the various meanings of the phrase. This requires (1) a description of the essential features of the subjective experience of asserting a right to education, (2) a description of the constitutive experience that prompts the assertion of a right to education, and (3) an examination of how an individual's perspective may alter or limit his or her experience, which in turn may alter or limit the usage and, therefore, the meaning of the phrase.

This kind of approach may best be labeled hermeneutic if, indeed, a label is needed that evolves from both an outside (others' definition of my situation) and an inside (my definition of my situation) view of the act of asserting a right to education. At the same time, this particular approach utilizes whatever method best reveals the intelligibility of the claim and of the act of claiming. The linguistic and logical tools of the analytic philosopher are utilized with the bracketing and perspective taking of the existential-phenomenologist. Used appropriately, each method—separately and together—allows us to interpret the phrase as accurately as possible.

The actual contextual analysis (or broad interpretation) that is the centerpiece of this book is preceded by two stage-setting tasks: (1) the formulation of seven hypothetical yet representative examples of the assertion of a right to education in contemporary discussion and (2) a sketch of a logical analysis of the phrase *right to education* with a discussion of the limitations of this type of analysis.

The latter task requires further explanation. I am well aware that most studies of the meaning of the expression *right to education* focus on a logical, abstract analysis and neglect its contextual dimensions. There seems to be a tendency, in both common usage and philosophical analysis, to think that if one could determine the meaning of a *right* in the abstract and also settle the meaning of *education* in the abstract, then one could ascertain the meaning of *right to education* in a concrete situation. This approach is limited, if not misleading, however. Unquestionably, a particular phrase has an inherent meaning that must be analyzed if the phrase is to be understood. Although a necessary condition, it is hardly sufficient. As Wittgenstein has demonstrated, an expression generates a large measure of meaning according to how it is used in a given context.

The determination of an expression's meaning, says Wittgenstein, demands a full exploration of its grammar. Grammar includes all those rules and regularities that permit varying and novel uses of terms yet limit which uses are acceptable. Grammar consists of surface grammar, what the words mean in themselves, and depth grammar, what the speaker means by using the expression in that context. A complete understanding of the meaning of an expression requires an analysis of both.

What follows may be construed crudely as an exercise in applied ethics or, more finely, as a rudimentary theory of the way in which language and a sense of justice are interrelated and interdependent. From the former point of view, I hope to reveal what really is at stake using seven situations where we are likely to hear a right to education invoked. From the latter, I hope to make the case that we cannot limit our interpretation of right to education to an analysis of surface grammar without limiting our understanding of and, therefore, access to justice as well. From both points of view, I hope to demonstrate that an open-ended, contextual analysis of the phrase is both possible and helpful in the construction of justice.

## 2

# Hypothetical Assertions of a Right to Education

There are seemingly limitless examples where persons assert or claim a right regarding education. High school students claim the right to dress as they please. Public school teachers assert their right to strike. Parents believe they have a right to educate their children as they wish. Taxpayers argue for their right to require accountability on the part of educators. College students claim a right to influence their education. Faculty members articulate their right to academic freedom.

There are arguably fewer, but nonetheless still numerous, illustrations where persons actually assert a right to education. This chapter features some representative examples of such cases. These samples, typical scenarios in which the assertion of a right to education seems to make sense, constitute the starting point and the basic data for the book.

Each scenario has been constructed with two criteria in mind: (1) that it be representative enough to provide the breadth of commonality found in usage of the phrase *right to education* yet (2) that it be unique enough to provide the depth and quirkiness of its usage. While these scenarios are strictly hypothetical situations, they are firmly rooted in reality. Each, in fact, is loosely based on actual cases.

## Scenario One: Danny[1]

Danny is a fourteen-year-old boy who attends school in a small rural district. Early in his schooling career, it was determined that Danny was educable mentally retarded (EMR). In addition, Danny has some difficulties with physical coordination.

The district's response to students such as Danny had been to provide separate special education classes at the elementary (K–8 ) level and offer various programs, usually involving individual tutoring, for those who remained enrolled at the high school level.

When Danny reached high school age, the district's special education committee (including two assistant principals, a guidance counselor, a reading teacher, a home economics teacher, and both special education teachers) discussed how Danny might best be handled until he left school. The near-consensus was that, since Danny had been in a special class with other special children throughout elementary school, continuing the daily one-on-one, two-hour tutoring sessions offered the best solution.

There was one dissenter. Ms. Healey, the younger of the two special education teachers, was committed to the implementation of Public Law 94–142, a law that provides, among other things, that children with special needs should be educated in the least restrictive environment appropriate to their needs. Moreover, Ms. Healey had adopted the philosophical view that mainstreaming, in most cases, was the right thing to do.

When faced with the imminent decision to relegate Danny to the restrictive environment of individual tutoring, her response was:

> This is simply not fair. Danny is a person just like our other students. We must respect his *right to education.*

> We can only do that by determining the appropriate Individualized Educational Plan for him and by implementing that plan in the least restrictive environment he can handle. I think he should be learning how to interact with other students his age.

## Scenario Two: Riverside[2]

Riverside is a small, predominantly black community in Pennsylvania, located along a very polluted river. It is a mill town gone to seed. The mill is closed, buildings are in disrepair, and the level of municipal services is poor—and slipping. Many people are unemployed.

Riverside has long supported its own school district. However, in recent years, other small-town school districts have joined to form larger consolidated districts under the authority of the Pennsylvania Department of Education.

Due to mill closings and a depreciating tax base, it became increasingly difficult for Riverside to generate the revenue necessary to support its schools. Riverside has sought to unite with surrounding, wealthier districts, but no such merger has thus taken place.

Some members of the Riverside community felt that discriminatory treatment by the Pennsylvania Department of Education figured prominently in their inability to effect a merger and sought legal assistance. Neighborhood Legal Services agreed with the Riverside citizens' claim and filed suit on their behalf.

A hearing was held. At the end of the session, the petitioners submitted a brief to the court that stated, in part:

> The *right to education* must be viewed as a fundamental right under the First, Fifth, Ninth and Fourteenth Amendments. . . . Therefore, the actions of the state

department of education in the matter of the Riverside School District should be subject to the strict scrutiny standard of review of this court.

## Scenario Three: Becky Mason[3]

Mrs. Mason is a taxpayer and a mother of three in a suburban middle-class school district undergoing retrenchment. Elementary schools in the district may be forced to close due to declining enrollments. Students may have to be assigned to other schools beyond walking distance from their homes.

A number of years ago, the school board, with the support of the vast majority of citizens, decided that the district would no longer provide bus transportation for students—no matter how far that student had to travel to school—so that the district would not incur the state-mandated expense of transporting district residents to parochial and private schools outside the district. At the time of this decision, only high school students were affected since all elementary students lived within walking distance of their assigned school. However, with the possibility of school closings on the horizon, parents of elementary students may have to provide daily transportation for their children.

The school board held a public hearing to obtain citizen reaction to their tentative plan to close a particular school—an elementary school located five blocks from Mrs. Mason's home. It is the school that her seven-year-old daughter, Becky, currently attends. If the building is closed, Becky will be reassigned to a school two-and-one-half miles from home.

Mrs. Mason expressed her concern at the public hearing in these words: "My daughter has a *right to education* just like everybody else. If those other children can go to school close to home, Becky should be able to as well!"

## Scenario Four: Special Commission[4]

On the occasion of the fortieth anniversary of the end of World War II, a special commission was convened to discuss and study "Human Rights in a Changing World." Members of the commission included scholars, political figures, and religious leaders from Europe and the Americas.

After a month-long series of meetings, the commission issued a document that stated, in part:

> Among the rights which all persons everywhere possess is the *right to education*. Every child is entitled to receive an education which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture, and enable him to develop his abilities, his individual judgment, and his sense of moral and social responsibility, and to become a useful member of society.

## Scenario Five: Bishop of Pittsbury[5]

Pittsbury is a small city with a substantial Catholic population, a large number of whom received their education in the parochial schools that are scattered throughout the city. At one time, a Catholic education cost little more than the weekly contribution to the parish collection basket. In recent years, however, a scarcity of (low-salaried) teacher-nuns and an increased number of (higher-salaried) lay teachers have led to skyrocketing operating costs. Consequently, the parochial schools have been forced to raise tuition year after year in order to keep up with rising instructional expenses. As a result, enrollment has declined as those who can no longer pay the tab drop out of the system.

The diocesan schools office has, for a number of years, been trying to generate political support for various public programs that would bring financial relief to the parochial schools and to those parents with children in parochial schools. These programs have included textbook and audio-visual materials, supplemental funding, transportation programs, and, most recently, voucher plans and tuition tax credit programs.

The bishop of Pittsbury, in a pastoral letter marking Catholic Schools' Week, made special reference to tuition tax credits. His argument for the merit of a tax credit program is based, in part, on "the *right to education,* which includes the parents' right to choose the content of an appropriate education for their children."

## Scenario Six: Indian Hills[6]

In a neighboring state, there are some sixty school districts. Per pupil expenditures in each district have varied widely as have total revenues. State supplemental funding has ensured that each district is able to maintain a minimum revenue level but has done little to erase the economic disparity among the various districts.

The per pupil expenditure figure in the rural Indian Hills school district is one of the lowest in the state. At the same time, the property tax rate—the rate of taxation expressed in mills per dollar—in Indian Hills is among the state's highest. Thus, it would be very difficult for the school board to generate any additional local tax revenues. Residents of Indian Hills fear that their educational programs are slipping far behind the other districts in the state.

In an effort to remedy this situation, the Indian Hills School Board filed suit in state court against Horace Manning, the state secretary of education, alleging that discrepancies among school districts' per-pupil expenditures violate the state constitutional mandate for a "thorough and efficient system of education for all."

*Indian Hills v. Manning* made its way to the state supreme court, which settled on behalf of Indian Hills. The court's decision stated:

> The mandate in the state constitution to provide a thorough and efficient system of education for all elevates the *right to education* to the status of a fundamental right in this state. As a result, the state's system of financing education is subject to strict review by this court. Differences in dollars spent per pupil is a valid indicator that there are differences in the education provided for each student, and therefore, may be taken as evidence of a violation of a constitutional right.

## Scenario Seven: Eastern Elder Amish[7]

There is a large Amish population in eastern Elder County. The Amish are a Christian sect who choose to live a life separated from modern conveniences, entertainment, and mores. Over the years, the Amish have lived under a truce with the state department of education that provided (1) that all Amish children would attend eight years of elementary school in one-room schools run by the Amish but supervised by the state and (2) that after leaving eighth grade and before reaching the age of sixteen, all young Amish men and women would participate in a state-supervised home study program, in addition to working on the family farm.

There have been rumblings recently in the state legislature about a move to revoke the department of education's pact with the Amish and to require each Amish student to attend public schools in the interval preceding his or her sixteenth birthday.

Adam Everhart is a state assemblyman from Elder County running for reelection. In a recent campaign speech in eastern Elder, Everhart addressed the relationship between the public school system and the Amish. Everhart said:

> It is a great accomplishment that all children in our state have the *right to education*. But it is also the mark of a free society that the Amish children of our county cannot be compelled to claim such a right. Therefore, I will never support the move currently afoot to renege on the State's previous agreement with the Amish.

## Notes

[1] Scenario one reflects the ongoing debate prompted by Public Law 94–142 in 1975. It was inspired by ethicist Daniel Maguire's discussion of his own handicapped son, Danny, in *A New American Justice* (Garden City, N.Y.: Doubleday and Co., 1980).

[2] Scenario two is based on the 1981 court-ordered merger of five suburban Pittsburgh, Pennsylvania, school districts into the Woodland Hills School District. In 1971, Neighborhood Legal Services filed suit on behalf of a group of parents residing in the former General Braddock School District, charging discriminatory treatment by the Pennsylvania Department of Education.

[3] The Mount Lebanon School District in suburban Pittsburgh, Pennsylvania, is a model for this scenario. The district has had a transportation policy much like the one described here and has faced the possibility of school closings. Numerous public hearings on the matter have been held and similar statements heard.

[4] The commission's statement in scenario four is paraphrased from Resolution 1386 (XIV), adopted on November 20, 1959, by the United Nations General Assembly, *The Declaration of the Rights of the Child*, principle 7, paragraph 1.

[5] Scenario five is a factual description of the financial difficulties that are afflicting Catholic schools in dioceses throughout the United States. These

financial difficulties have resulted in political action such as that described. The bishop of Pittsbury's statement is paraphrased from the "Declaration on Christian Education" in *The Documents of Vatican II*, ed. Walter Abbott (Glen Rock, N.J.: Paulist Press, 1966).

6 It is undeniable that per-pupil expenditures vary widely in many states with multiple school districts. In Pennsylvania, for example, the Jenkintown School District spends approximately three times as much as does the Windber School District. (Cf. *Selected Expenditure Data for PA Public Schools, 1983–84*. Harrisburg, Penn.: Pennsylvania Department of Education, 1985). Also, a number of states, including Pennsylvania, New Jersey, and Ohio, have "thorough and efficient" clauses in their state constitutions. (Cf. Pennsylvania *Constitution*, art. 3, sec. 14; New Jersey *Constitution*, art. 8, sec. 4; Ohio *Constitution*, art. 6, sec. 2). New Jersey's Supreme Court, in *Robinson v. Cahill* (62 N.J. 473, 303A. 2d 273 [1973]), set down an opinion similar to the court's opinion in the hypothetical *Indian Hills v. Manning*.

7 Scenario seven is modeled after the accommodation reached between the Amish population in Lancaster County, Pennsylvania, and the Pennsylvania Department of Education. Periodically, questions are raised in educational circles and in the media about the appropriateness of this agreement, with much the same response as the one that Adam Everhart offers.

## 3

# The Limitations of Looking at Surface Grammar

Seven typical examples of the use of the phrase *right to education* in ordinary language are available for our interpretation. Probably the most common approach to analyzing the meaning of the phrase is to examine its surface grammar. To do so is to abstract the actual statement from its concrete context, to examine the fixed definition of the terms involved, and to consider how word order or syntax affects meaning.

In my introductory remarks, I suggested that analysis of a phrase's surface grammar could not fully exhaust its intended meaning. A complete interpretation requires that attention be paid both to surface grammar and to what Wittgenstein calls *depth grammar.*[1] A phrase's surface grammar is accessible through the use of logical analysis; however, its depth grammar can only be examined through contextual analysis.

This chapter argues the latter point. It will include (1) a brief analysis of the surface grammar of the phrase, with some comments referring to troubling points and unexplained examples, (2) a discussion of the assumptions and omissions that lead to an incomplete understanding of meaning, and (3) an explanation of how contextual analysis can fill in the blanks left by more abstract analyses.

Briefly there are three difficulties with relying on a strictly logical analysis of the phrase *right to education*. First, logical analysis rests on the assumption that the only function of words is to refer to entities in the world; as a result, the multifaceted capacity of the phrase is simply missed. Second, logical analysis assumes that all entities—including persons—are separate, autonomous, and self-contained; as a result, the way in which the phrase relates an individual to the society in which he or she lives is neglected. Third, logical analysis relies on the assumption that the spoken word can be understood without reference to the speaker or the context of the speech; as a result, no attention is paid to the complex personal and political interests that prompt one to claim a right to education. These three difficulties—one epistemological, one sociological, and one political—point to the need for contextual analysis. Were we to rely solely on logical analysis of the phrase's surface grammar, we would know nothing of the variant ways in which the phrase is used, nor would we be fully aware of its social and political dimensions.

## Surface Grammar Analyzed

Let us begin with the actual statements uttered in each of the seven representative scenarios:

(1) "We must respect his right to education."
(2) "The right to education, must be viewed as a fundamental right . . . "
(3) "My daughter has a right to education just like everyone else . . . "
(4) "Among the rights which all persons possess is the right to education . . . "
(5) " . . . the right to education, which includes the parents' right . . . "

(6) " . . . elevates the right to education to the status of a fundamental right . . . "
(7) " . . . all children in our state have the right to education . . . "

These statements may be rewritten to emphasize certain important features (and to add some unspoken phrases) as follows:

(1a) "We must respect *his right to education.*"
(2a) "The *right to education, held by all U.S. citizens,* must be viewed as a fundamental right . . . "
(3a) "My daughter *has a right to education* just like everyone else . . . "
(4a) "Among the rights *which all persons possess* is *the right to education* . . . "
(5a) " . . . the *right to education held by my Catholic constituents* (which) includes the parents' right . . . "
(6a) " . . . elevates the *right to education held by all citizens of this state* to the status of a fundamental right . . . "
(7a) " . . . all children in our state *have the right to education* . . . "

The phrases highlighted above allow us to make certain observations. Apparently a right to education is something one has, holds, or possesses. Each of the speakers above would be willing to assert that:

$x$ has/holds/possesses a right to education

where $x$ is, variously, Danny, all United States citizens, Becky Mason, all persons, Catholics in the diocese of Pittsbury, all citizens of a particular state, or all children in a particular state.

Given this common phrasing, we can begin to analyze, to break down, the elements of such an expression. We should note first, however, that the semantic appearance of the statement as formulated

*x* has/holds/possesses a right to education

is a factual statement that can be checked against objective human experience. It does not appear to be, for instance, an evaluative or exclamatory statement. In order to determine whether the above statement is true, we need first to ascertain the identity of *x*, the meaning of *right to education*, and the nature of the "has" relation. That is, we simply need to determine to what each phrase refers and then check to see whether the stated relation holds.

Let us first consider the *x*. In each of the examples discussed in this chapter, *x* is a person. In some instances, *x* is an individual, a clearly identifiable person; in others, *x* refers to a class of people who individually, but by virtue of membership in some group, hold the right to education. In all cases, it is an individual person who holds the right. Collective entities are not usually thought to have rights. Nor is it generally thought correct to say that an animal has a right to education.

The fact that a right to education can only be possessed by an individual tells us something about the kind of "thing" a right to education might be. It is a thing possessed, in some sense, by individual persons but not by inanimate objects, nonhumans, or collective entities. At first glance, this appears to be quite obvious, but problems abound.

For example, there are (growing?) numbers of people who wish to attribute rights to animals. Although it seems somewhat odd to us to say that "my dog has a right to education," it is neither logically impossible nor inconceivable. Consider a scenario in which a municipality requires that all dogs attend an abbreviated obedience school course in order to be licensed and that this must be done at the owner's expense. An impoverished dog owner might argue that his dog "has a right to education" rather than allow the municipality to throw the dog in the pound. And I suspect that given this hypothetical set of circumstances, we could make some sense of this assertion that a dog has a right to education.

The fact is that the question of who can properly be said to have rights is a highly problematic one. Does it make sense to say that an animal has a right to education or that a mentally incompetent person has a right to education? Is a right to education something that both an adult and a child possess?

Perhaps these questions can best be answered if the analysis shifts to the meaning of the phrase *right to education*. Typically this phrase is broken down into its two parts, *right* and *education*. The consensus seems to be that the idea of a right is the more elusive component, while the concept of an education is clear. One could argue, however, that both concepts—right and education—are equally elusive.

The simple definition of education is often equated with schooling. If one has a right to education, one has a right to schooling. This is surely the most typical interpretation—but not the only one. Philosophers of education have spent volumes analyzing what does and what does not constitute an education, and agreement is the exception rather than the rule. Further, technological developments such as low-cost computer capability and cable television are expanding the field of what one can know and what one needs to know. It is conceivable that in order to be considered fully educated in the future, a student will require access to computers and cable television programming located outside of school walls.

So the question of who has a right and when a right to education exists is far from being definitively answered. Perhaps describing what a right really is would make the issue clearer.

The term *right* is at the heart of the matter. If we know what a right is, then perhaps we can simply construe *x* and *to education* as two of many possible descriptive adjectives modifying the entity *right.*

Various plausible theories have been offered as to what constitutes the root idea of a right. It is generally agreed that the characteristics common to any right is some sort of advantage for the person who has the right.[2] However, various rights can be distinguished according to their structure and, therefore, involve different sorts of advantages. In an analysis that remains important to modern-day theorists, Jeremy Bentham distinguished between (1) liberty rights, (2) rights correlative to obligations, and (3) powers. Liberty rights result from the absence of obligations. Rights correlative to obligations are rights to services that exist in the performance of their correlative obligations. Powers are rights that one has when enabled to change the position or status of others.[3] Built into Bentham's analysis is the assumption that only legal rights make sense, so his schema is intended to apply only to rights enforceable under law. However, modern-day theorists have applied this schema to natural or moral rights in a continuing attempt to discover what the term *right* properly means, whether used with reference to things moral or things legal.

There appear to be two primary competing theories of what constitutes a right. Both theories take off from Bentham's schema. The first is the interest or benefit theory, which focuses on rights correlative to obligations as the paradigm case of a right. One has a right when one stands to benefit or has an interest in another's duty or obligation. The critical problem facing such a formulation is that it is not clear why it is necessary or even helpful to speak of rights at all. Duties appear to be constitutive of rights, and rights can be reduced to patterns of duties. Where there are no identifiable duties, there are no rights.

The second theory is the will or choice theory, which attempts to separate rights from total dependence on duties and to take into account liberty rights and powers as well as rights correlative to obligations. In this view, one has a right when one has an acknowledged choice.[4] However, as the premier advocate of this view, H. L. A. Hart admits that this theory is satisfactory only at the level of what may be called special rights, that is, those rights generated by explicit agreement or contract.[5] When faced with assertions of general rights, i.e., rights that are claimed in general but not yet acknowledged by moral, legal, or political agreement, the theory falls short.

Both the interest theory and the will theory can be applied plausibly to the right to education. Educational philosopher Frederick Olafson articulates the former when he maintains that the right to education is a special right generated by the relationship between the parent and the child.[6] The child has a right *to* education *against* the parent who has a duty to provide education.

Philosopher Joel Feinberg develops a variation of the will theory when he analyzes the right to education as "an ordinary duty with an associated half-liberty."[7] Rights, for Feinberg, *are* correlated with others' duties, but rights also give the critical power of discretion on the part of the right-holder. One is at liberty to claim or not to claim one's due. Since the right to education is a mandatory right with no liberty to choose not to participate, it is not clear why it should be called a right at all. Still, Feinberg suggests that there is a right to education because one can properly claim the necessary means to pursue one's education, and the power to claim for oneself is what rights are all about.

Such analyses are imaginative and helpful but ultimately unsatisfactory. They are helpful because each of the above observations is insightful and accurate for particular cases and contexts. But they are unsatisfactory because they seek the root meaning of the phrases used, abstracted from context, and assume that the root meaning exhausts the intended meaning of a right to education.

It makes sense to say that parents have a duty to educate their child and that, therefore, we can speak of the child's right to education. However, this does not help us to understand the case in which Mrs. Mason claims a right to education for her daughter Becky against the school board. If a right to education can only be claimed against a parent, then Mrs. Mason's assertion is nonsense.

It also makes sense to say that one can claim a right to education even where schooling is mandatory since the act of claiming is the essential ingredient. But this does not help us to understand why Representative Everhart can also claim a right to education when what he is claiming for the Amish is the power to choose not to participate in mandatory schooling. If the right to education is the ability to claim an education that is mandatory, how can it also be the ability to claim that it is not mandatory? These are puzzles that can only be resolved by addressing not only the literal meaning of the phrase but also the context in which the phrase is used.

It should be obvious by now that it is not a simple matter to identify, unequivocally, who has a right to education and who does not. Nor is it clear that *right to education* has just one definable root meaning. It is similarly difficult to ascertain what it might mean to have, hold, or possess such a right. In ordinary usage, one can have such different things as a book, a nose, an ability, or a cold. One can hold a baby or hold title to property. One can possess an original painting or can possess a right-of-way. What have, hold, or possess means in each case depends on what one has, holds, or possesses. Since it is not obvious what the phrase *right to education* refers to, it is also not clear what sense can be made of has, holds, or possesses. It should be mentioned here that Bentham's analysis of rights focused on what it means to "have a right" rather than defining what a right is.[8] For Bentham, to have a right is to be the beneficiary of another's duty. It is not always clear among modern theorists whether they follow Bentham's lead in asking what it means to have a right or whether they are asking to what the simple term *right* refers.

## Assumptions and Omissions

The preceding is intended to offer the flavor of an abstract analysis of the phrase *right to education*. It removes the actual statement from each concrete context and formulates a common phrasing, that is, *x* has a right to education. It then breaks this statement down into its atomic elements and briefly considers the meaning of each. It tells us a great deal about the surface grammar of the phrase *right to education*. It tells us, for instance, that individual persons have rights to education, and that these rights have put them in an advantageous position in a particular relationship. It tells us that sometimes benefits for the individual are involved, that sometimes choices by the individual are involved, and that sometimes both are involved. It tells us that a right to education might refer to schooling or that it might refer to something quite different.

However, this refers only to the degree of meaning that the phrase itself contains. It does not explore, for example, how the expression *right to education* is typically used; instead, the preceding analysis assumes that the expression's function is to simply refer to, or represent, entities in the world. It does not acknowledge the interaction among persons that prompts the use of the phrase; rather, the analysis assumes that these words are the product of an autonomous individual, apparently in a vacuum. It does not admit either the role of personal and political interests in shaping an assertion of the right to education; on the contrary, it assumes that meaning remains constant whatever the interests of the speaker or the political context of the speech. Each of these observations demands further comment.

### The Epistemological Assumption

Alasdair MacIntyre, a prominent commentator on moral theory, has called rights "a central moral fiction of the age,"[9] perhaps meaningful within the bounds of an abstract moral theory but without a referent in actual human experience. MacIntyre is especially critical of prominent modern theorists who rely heavily on the language of individual rights to shape a conception of justice. John Rawls (*A Theory of Justice)* and Robert Nozick (*Anarchy, State and Utopia*) are two of MacIntyre's better known targets.[10]

MacIntyre's judgment that rights are "a fiction" is as harsh as Rawls's and Nozick's judgments are congenial. However, MacIntyre makes the same mistake as do Rawls and Nozick. He assumes that the term *right* must always refer to a particular thing. If there is no identifiable entity or relation or phenomenon to which it properly refers, then the term is not meaningful in interpreting human experience. The difference is, of course, that both Rawls and Nozick assume that there is a referent for the term *right*. And even though Rawls accepts a referent for the phrase *right to education* while Nozick does not,[11] the theory of language behind both positions is identical. Words refer. Words label objects. Those objects may be physical or mental, concrete or abstract, real or not. The ontological status of the object is irrelevant. What is crucial is the assumption that a word or phrase can be correlated in a one-on-one sense with some feature of the world.

It is this assumption that motivates a preoccupation with the surface grammar of the phrase *right to education*. We have seen it at numerous times during the previous analysis. For example, the statement "*x* has a right to education" is immediately taken to be factual, which can be checked against objective human experience. Also the terms *right* and *education* are presumed to represent two separable and independent objects. Finally, the word *has* is thought to refer to some logical relation between *x* and right to education. If the "has" relation holds, the statement is true; if not, the statement is false. Each term is assumed to be a picture of, or label for, some feature of the world.

Ludwig Wittgenstein's *Philosophical Investigations* questions this assumption.[12] Wittgenstein substitutes an emphasis on language as human activity for an emphasis on language as *speech. This in no way denies that words may* be used to picture or label or refer. However, it does deny that such labeling is a privileged or preferred function of language. Language may and does serve various performative functions. Words are used as signals in what Wittgenstein calls language games. In order to understand the meaning of a particular word or phrase, one must take into account the language game in which it functions. In other words, the context of usage contributes to the meaning of a particular phrase.

In order to clarify the difference in approach, we should compare further the individual rights theory of Rawls and Nozick and the language as speech theory of Wittgenstein. When addressing the proper use of the term rights, for example, Wittgenstein asks: "On what occasion, for what purpose, do we say this? What kind of actions accompany these words? In what scenes will they be used; and what for?"[13]

Statements by Rawls and Nozick about the meaning of the term *right* and, by extension, the phrase *right to education* are not designed to answer these questions. Nozick says rights are "permissions to do something and obligations on others not to interfere."[14] This characterization is essential and logical rather than functional and pragmatic; that is, it is not motivated by the question of how a person uses the word.

Although Rawls never actually says what rights are, it is not wholly because he is motivated by a functional question. Rather, he simply assumes that we understand such terms as *rights* and *duties*.[15]

Rawls takes for granted an analysis of rights as claims validated by principles, although he does have some idea that the term *right* can be linked to the practice/action of claiming, an observation that hints at the sorts of contextual questions Wittgenstein has encouraged. However, as the term *right* is incorporated into Rawls's abstract theory of justice, the emphasis tends to fall on the term's use as a label for the entitlements generated by the socially chosen principles. The term's alternative use is deemphasized and the contextual dimension of its meaning is obscured.

It is not surprising, then, that neither theory discussed above is able to fully account for all of the accepted uses of the phrase *right to education.* Rawls's notion of a general right to education, especially as it pertains to a particular level of schooling, gives rise to the Riverside, Human Rights Commission, and Indian Hills cases. In all three instances, the issue is equity and equality. Rawls's formulation is less helpful regarding the cases of Danny and Becky Mason where the issue is the appropriate kind rather than the level of educational services offered while it is simply inadequate as an interpretation of the Pittsbury and Amish cases where individual choice takes precedence.

Nozick's emphasis on action rights and individual choice helps us to make some sense of the Amish and Pittsbury cases, but only if we first assume that the phrase *right to education* is used erroneously instead of the more accurate *right to educate.* Nozick's lack of emphasis on rights of recipience prompts the question whether it is appropriate to talk of a right to education in the cases of Becky Mason and Danny at all. At the same time, Nozick's denial of any general right to education opens the cases of Indian Hills, the Human Rights Commission, and Riverside to the charge of "nonsense."

To assume that words may only be used to refer, represent, or label objects in the world is, as Wittgenstein pointed out,[16] problematic, and especially so with regard to the phrase *right to education.* It makes no difference whether this assumption is embodied in an intentional analysis of meaning, such as the earlier example of the statement "*x* has a right to education," or incorporated into a broad theory of justice. In either case, we are simply unable to account for all of the everyday instances where the phrase *right to education* is acceptable.

## The Sociological Assumption

If one accepts Wittgenstein's contentions that meaning depends on use and that labeling is not the only possible use, then one can no longer blithely assume that the phrase *right to education* is the product of an autonomous individual in a vacuum. One must echo Wittgenstein, "On what occasion, for what purpose, do we say this? What kinds of actions accompany these words? In what scenes will they be used; and what for?" Answers to such questions will reveal the interaction between persons in a way that our earlier logical analysis could not.

In the analysis of the surface grammar of the phrase "*x* has a right to education," the identity of *x* was stipulated as the one who has a right to education. Only *x* can be acknowledged as a player because *x* is the only person referred to in the statement. Logical analysis pays no attention to the speaker when the speaker is not *x*, nor can it attend to the person or persons spoken to. More importantly, logical analysis does not address the interaction between *x*, the speaker who is not *x*, the person spoken to, or the social context.

A logical analysis of the surface grammar of the phrase *right to education* is sufficient if one assumes that persons are by nature separate, autonomous, and self-contained. However, certain contemporary thought in social psychology and in the sociology of knowledge shakes the very roots of that assumption. For example, George Herbert Mead, in *Mind, Self and Society,* offers a social ontology of the self in which the mind and the self are constituted in social interaction.[17] The fully constituted self consists of the "I" of spontaneous, individualized action and the "Me" of the typified communal responses of past action. Mead has this to say:

> Both aspects of the "I" and "Me" are essential to the self in its full expression. One must take the attitude of the others in a group in order to belong to a

> community; he has to employ that outer social world taken within himself in order to carry on thought. It is through his relationship to others in that community, because of the rational social processes that obtain in that community, that he has being as a citizen. On the other hand, the individual is constantly reacting to the social attitudes, and changing in this cooperative process the very community to which he belongs.[18]

Mead's theorizing belies the myth of the discrete individual upon which the logical analysis of "*x* has a right to education" depends.

Unfortunately, the notion of the autonomous, self-contained individual is crucial to almost all contemporary theorizing about rights and the right to education. John Rawls and Robert Nozick, mentioned earlier, illustrate this point. That Nozick holds an extremely individualistic point of view is clear and explicit. That Rawls also has a strong individual bias is less obvious but, nonetheless, accurate.

Nozick refers frequently to the "fact of our separate existences."[19] He insists that there is no social entity that can represent the good apart from the simple sum of individual goods. And he observes that the acknowledgment of persons living in the same world and voluntarily participating in common activities does nothing to alter the moral separateness that accompanies the ability to plan one's own way in the world. In Alasdair MacIntyre's words, Nozick's social world is nothing but a "meeting place for individual wills."[20]

Rawls, like Nozick, is concerned with the inviolability of the individual. Unlike Nozick, Rawls does attempt to incorporate the social dimension of humanity into his theory. For example, he formulates principles for the basic structure of society before he formulates principles for individuals because he is, to some degree, cognizant of the formative power of social institutions. Further, he acknowledges the connection between his principles and the development of what he calls community. He concludes that these principles are natural precisely because they are social.[21] Still, Rawls's attempt to take the individual seriously in a social context remains more individualistic because he assumes that any interaction among persons—whether physical, intellectual, or emotional—is a voluntary and contrived event rather than a natural and essential aspect of human life.

Daniel Maguire criticizes both Rawls and Nozick when he says, "Individualism is the operating creed in this nation and the theories of justice that emerge from it are distorted and inadequate."[22] Maguire contends that this individualistic point of view improperly distorts the meaning of the term *right* because it emphasizes the detached individual as right-holder against society rather than the complex relation between the individual and society. Says Maguire:

> [S]ince we are not merely individuals but social individuals, rights too have a social meaning. Individual rights are conditioned by the common good. Regardless of individual merit and talent, no one has a right to anything without reference to the society of which that individual is a part. Most American discourse about "merit" and "rights" rests on the individualistic fallacy of seeing persons as asocial beings.[23]

Total reliance on logical analysis of the phrase *right to education* reinforces this tendency to see persons as asocial beings; a contextual analysis, however, allows us to incorporate social background as the common context within which a person may come to understand the concept of a right to education.

## The Political Assumption

Wittgenstein's questions undercut the importance of yet another assumption. If the meaning of the phrase *right to* *education* depends upon the way it is used during conversation by persons who are constantly, and naturally, interacting, then its meaning also depends on the acknowledgment and awareness of one factor intrinsic to that interaction—power. The assumption that a phrase's meaning remains constant whatever the interests of the speaker or the situation is simply untenable.

In his book *Power Over Power,* David Nyberg maintains that " . . . power is unavoidable in all social relations that involve at least two people related through a plan of action."[24] Certainly the sorts of situations in which a right to education might be asserted fall within that description. To understand the meaning of the phrase, one must take into account the power relations at work. One must realize, for example, that the assertion of a right normally implies an adversary situation. If one is receiving one's due, there is no need to assert rights. As Daniel Maguire has observed, "Rights talk arises in the face of a denial of rights."[25]

This sort of insight may be lost where a strictly logical analysis is employed. Even when the terms are given some political content, the full political ramifications of the situation may be obscured. For example, in the earlier analysis of the surface grammar of the phrase *right to education,* the term *right* is taken to indicate an advantage for the person who holds that right. This revelation can be quite misleading when compared with the contextual observation that persons who actually use the phrase *right to education* are often those *without* power within an educational setting. Such persons have a vested interest to attain power but are unable to do so. If we do not understand how personal interests and political realities shape the assertion of a right to education, then we cannot fully understand the meaning of the phrase.

It is common among contemporary moral theorists to avoid the realities of power and personal interests when addressing the issues of rights and the right to education. Rawls and Nozick, once again, are exemplars of this tendency. For both Rawls and Nozick, the meaning of the phrase *right to education*—if it has any meaning at all—is to be found in the theoretical-moral domain and not in the pragmatic-political. Rawls seems to feel that the realities of power are irrelevant in the determination of moral principles; Nozick goes a step further to maintain that power is antithetical to freedom and, therefore, antithetical to rights and justice.

In formulating his original position behind the "veil of ignorance," Rawls deliberately excludes the realities of power relationships by removing individuals' knowledge of their class or social status and their own natural assets and abilities.[26] The presumption is that the participants, acting in a manner that is free, equal, and rational, will choose moral principles that will somehow control power relationships once individuals' self-knowledge is restored. Nyberg doubts that this presumption is reasonable. He maintains that any theoretical split between morality and power "almost guarantees that the forces that favor morality in the world will never become powerful enough to contest successfully the forces that favor self-interest."[27]

Nozick has only one type of power relationship in mind when he holds that the constraints of morality set limits on power. For Nozick, power is domination of the individual by some group, society, or government.[28] The laws of nature outline the bounds of such power. Nozick's preoccupation with this particular face of power does not fully take into account the other sorts of power relationships that surround the assertion of a right to education.

Contextual analysis is necessary if we are to recognize the political relationships that exist among individuals and within the power structure. This will allow us to confront the role that individual interests and personal powerlessness play in the assertion of a right to education.

## Summary: How Contextual Analysis Can Fill in the Blanks

Clearly, an analysis of surface grammar does not exhaust the intended meaning of the phrase *right to education*. Surface grammar tells us nothing about the use of the phrase to express one's own needs or interests. Nor does it tell us about the societal expectations that shape one's need for an education, nor about the political realities that lead one to assert a right to education rather than to speak of this personal need.

A contextual analysis fills in these blanks by expanding the field of meaning to include the phrase's depth grammar. A logical analysis cannot do this because it rests on three assumptions: (1) that words' only function is to refer to entities in the world; (2) that persons are separate, autonomous, and self-contained; and (3) that the spoken word can be understood without reference to the speaker or the context of the speech. The resulting analysis is individualistic and abstract and not very helpful in concrete situations where one must respond to the assertion of a right to education.

A contextual analysis supplements an interpretation of meaning precisely because it is relational and concrete. Wittgenstein's queries clearly make no assumption that words are used simply as labeling devices since his questions ask *how* the word or phrase is used. Nor do they avoid the reality of social interactions or the efficacy of political interests. A Wittgensteinian or contextual analysis starts with the human agent in a specifiable situation. It looks not only at the persons and circumstances involved but also at the relations linking them. Further, a Wittgensteinian analysis examines the assertion of a right to education with an eye toward understanding why the assertion is appropriate in a particular situation.

A contextual analysis asks these questions: On what occasion, for what purpose, do we say this? What kinds of actions accompany these words? In what scenes will they be used and what for? It is to these types of questions that we now turn.

## Notes

1 Ludwig Wittgenstein, *Philosophical Investigations* (Oxford: Oxford University Press, 1958), sec. 664.

2 David Lyons, *Rights* (Belmont, Calif.: Wadsworth Publishing Co., 1979), p. 8.

3 H. L. A. Hart, "Bentham on Legal Rights," in *Rights*, ed. David Lyons (Belmont, Calif.: Wadsworth Publishing Co., 1979), pp. 127ff.

4 Ibid., p. 145.

5 Ibid., p. 148.

6 Frederick Olafson, "Rights and Duties in Education," in *Educational Judgements*, ed. James F. Doyle (London: Routledge and Kegan Paul, 1973), pp. 173–95.

7 Joel Feinberg, "A Postscript to the Nature and Value of Rights," in *Rights, Justice, and the Bounds of Liberty* (Princeton: Princeton University Press, 1980), pp. 156–58.

8 Hart, "Bentham."

9 Alasdair MacIntyre, *After Virtue* (Notre Dame, Ind.: University of Notre Dame Press, 1981), p. 71.

10 Despite the common emphasis on individual rights, the theories of Rawls and Nozick are quite different. Rawls's theory is one of liberal justice; Nozick's is one of the libertarian brand. Rawls begins with the assumption that there must be some form of institutional structure governing society and proceeds to consider which principles would best outline that structure. Nozick takes seriously the position of the anarchist and begins by justifying why any institutional structure may be morally valid. Rawls offers a sketch of justice that begins with a process but ends in a pattern. Nozick offers a process without end. Rights are generated by a chosen social arrangement for Rawls; rights preexist any possible social arrangement for Nozick. See John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971) and Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974).

11 Rawls and Nozick offer quite different views about the meaning, existence, and importance of a right to education. For Rawls, to have such a right is to

have a valid claim, a claim protected by principles to that education (schooling) that is commonly provided. If one has a valid claim or right to education, one may choose whether or not to exercise it. This element of choice, along with the element of a strong claim on the part of the individual, preserves individual integrity and generates self-respect in Rawls's view. There is a general right to education, one held by all.

For Nozick, there is no such right to education, nor can there be, since those basic rights that exist are prior to any social arrangement or agreement. Since there is no referent for the phrase *right to education*, even to use the phrase would be a grammatical error. It is possible that one could misspeak, however, and use the phrase when really referring to, for example, a right to educate one's offspring as one chooses. This would properly be called a right in that it consists of a permission to act in combination with others' restrictions or interference. However, the phrase effectively has no meaning.

12 Wittgenstein, *Philosophical Investigations*. For a secondary discussion of this point, see Garth Hallett, S. J., *Wittgenstein's Definition of Meaning as Use* (New York: Fordham University Press, 1967).

13 Wittgenstein, *Philosophical Investigations*, sec. 489.

14 Nozick, *Anarchy*, p. 92.

15 Rawls, *Justice*. Despite innumerable references to "rights and duties," Rawls does not explicitly explain how he intends these terms to be understood.

16 Wittgenstein, *Philosophical Investigations*, sec. 40.

17 George Herbert Mead, *Mind, Self and Society*, ed. Charles W. Morris (Chicago: University of Chicago Press, 1934).

18 Ibid., p. 199.

19 Nozick, *Anarchy*, p. 33.

20 MacIntyre, *After Virtue*, p. 22.

21 Rawls, *Justice*, pp. 259, 520ff, and 4.

22 Daniel Maguire, *A New American Justice* (Garden City, N.Y.: Doubleday and Co., 1980), p. 53.

23 Ibid., p. 7.

24 David Nyberg, *Power Over Power* (Ithaca, N.Y.: Cornell University Press, 1981), p. 16.

25 Maguire, *New Justice*, p. 72.

26 Rawls, *Justice*, pp. 118–41.

27 Nyberg, *Power*, p. 33.

28 Nozick, *Anarchy*, pp. 4–6

## 4

# *Right to Education* as a Political Weapon

As we attend to the contextual questions that Wittgenstein has posed for us, there are at least two perspectives that we might consider. The first is to ponder the language of the phrase *right to education* as a verbal phenomenon, scrutinize the phrase from the outside, and survey the linguistic and pragmatic terrain in which it is situated. The second is to consider the personal experience associated with the phrase; that is, to address it from the inside and examine the speakers' awareness of self and others. Chapters 4 and 5 focus primarily on the outside; chapters 6, 7, and 8 shift the focus to the inside.

Because this analysis is contextual, we shall study from a relational and concrete perspective rather than from an individualistic and abstract one. Further, we will emphasize the phrase's social and political utility. We do not seek, nor can we anticipate finding, a fixed core meaning of the expression.[1] What this analysis will yield is a set of "points for interpretation," that is, a series of questions to be posed when one is confronted with the assertion of a right to education. The answer to these questions should help to make sense of the phrase in that particular context and allow one to respond appropriately.

This particular chapter focuses upon how the phrase *right to education* is used. What functions, both linguistic and pragmatic, does it serve? Is there just one, clearly identifiable, function? Are there several different functions that, in turn, distinguish different senses of the meaning of the phrase? Or does the phrase have multiple functions that taken together make it a uniquely valuable linguistic tool?

The phrase serves a multifaceted function in ordinary language. The three facets are distinguishable but occur together. *Right to education* is used (1) as a political tool—to express one's dissatisfaction with a particular state of educational affairs; (2) as an allegedly objective standard—to imply, if ambiguously, a moral and educational objective that is unquestionably legitimate and that the particular state of educational affairs does not achieve; and (3) as a transforming device—to take the subjective and personal interests that prompt dissatisfaction and clothe them in the language of impersonal and objective reasons.

These three combined facets allow the phrase to be used not merely as a political tool but also as an especially effective political weapon since it invests peoples' interests with more argumentative weight than they might carry alone.

Before talking about the particular use(s) of the phrase, it might be helpful to think about its function as a slogan. It is possible that thinking about a *right to education* in this way could loosen the hold of the typically held view that *right* and *right to education* represent entities in the world.

## *Right to Education* as Slogan

According to Harvard philosopher Israel Scheffler, a slogan is neither a statement of descriptive fact nor a statement of analytic truth.[2] Rather, a slogan is a summary statement (or in this case, a phrase) that may encompass descriptive fact and perhaps some analytic truth but that always includes a prescriptive element. Scheffler focuses on what Komisar and McClellan have called the ceremonial use of slogans.[3] He suggests that a slogan, such as *right to education*, symbolizes ideas that are more fully and more literally expressed elsewhere. Its use is to express and foster a community of spirit, attract new adherents, and provide reassurance and strength to veterans. Therefore, a slogan cannot be criticized for formal inadequacy or inaccuracy.

However, Scheffler notes that with the passage of time, slogans are increasingly interpreted more literally by both adherents and critics.[4] A particular slogan is taken to be a doctrine or the conclusion of an argument rather than a rallying symbol. The slogan is *reified;* that is, it is taken to refer to some truth about the world. It no longer requires validation.

As a result, says Scheffler, we must evaluate slogans on two levels: (1) as straightforward assertions and (2) as symbols of a practical social movement or intention. We must criticize the phrase both literally and pragmatically. Taken literally, is the slogan acceptable for use as a serious premise in an argument? Examined pragmatically, what is the context of the assertion of the slogan? The logical constraints on the two questions are quite different. Evaluated literally, one cannot hold both that there is a right to education and that there is not a right to education. However, one can imagine practical circumstances in which the above statements might both be true but in different contexts. Where education refers to elementary schooling, the former may be true. Where education refers to that training required for a NASA astronaut, the latter may also be true. Or in an alternative example, in Pennsylvania, the state constitution mandates schooling for all and renders the former statement true. However, the Mississippi constitution has, until recently, had no such provision and, therefore, rendered the latter statement also true.

Komisar and McClellan discuss further how to uncover the practical meaning of slogans. They suggest that one must first look at what other assertions (descriptive, analytic, and prescriptive) the slogan summarizes. At the same time, they remind us that slogans are systematically ambiguous in that the acceptance of a slogan is not logically tied to the denial of anything in particular.[5] Further, slogans need to be explicated in terms of the particulars of a given context. Yet a slogan does not imply those particulars in any logical sense; it merely becomes attached to them. As a result, one can have a slogan without accepting the associated particulars.[6]

Let us assume, for the moment, that the phrase *right to education* is used as a slogan.[7] Then let us apply Scheffler's general observation regarding slogans and assume that it has undergone a process of reification so that it is taken for granted as a feature of our world.[8] Now let us see if the sort of pragmatic interpretation that Scheffler recommends supplements the logical and enables us to understand more fully the use of the phrase in ordinary language.

## *Right to Education* in Use

To suggest that the phrase *right to education* is a slogan is to make a general observation about its use. Here we turn to specific cases.

For what purpose does Ms. Healey say that Danny has a right to education? She is not simply asking that Danny be provided with an education, because the decision had already been made to arrange tutoring sessions for him. Presumably this would constitute an education of sorts. Apparently she was not happy with that particular type of education, seeking instead an educational experience similar to those of other "normal" children.

Note that she did not simply say, "In my opinion, the best move would be to mainstream Danny insofar as that is possible." Is that because she felt that her own opinion and supporting reasons would not carry enough weight? In effect, Ms. Healey altered her strategy and changed the level of discourse. She introduced a political weapon—the phrase *right to education*. It is especially effective precisely because it does not seem to be a political weapon. Rather, it is a phrase that has acquired a certain degree of rational and moral legitimacy through long-term use and the process of reification.

When Ms. Healey speaks of Danny's right to education, the situation is no longer simply six professionals objectively offering opinions, weighing reasons, and making a cooperative decision. There is the additional element of a trump card—a reason (Danny's right to education) that has prima facie dominance over other reasons.[9]

By claiming a right to education for Danny, Ms. Healey places other members of the group on the defensive. They are forced to respond and defuse the assertion. Were she to omit such discussion, the burden of proof would remain squarely on her to convince the majority of the merit of her plan.

The analogy of the trump card is illuminating and needs to be developed further. In the course of the debate over what to do about Danny, the participants provide reasons for one plan or another as if following the suit of the lead card. The plan with the "weightiest" reasons, that is, the highest card played in that suit, wins—unless, of course, one participant has no cards (perhaps even has no appropriate reasons?) and plays a trump card. In this context, asserting Danny's right to education is playing trump. To beat trump, one must play a higher trump card. Cards in the original suit, no matter how high in value, lose their capacity to win the argument. The only recourse the other players have is to play higher trump cards (to assert other, presumably weightier, rights) or to try to argue that the supposed trump card is actually a "throwaway" suit (that the right asserted is not a right at all) or to maintain that this game is being played in "no trump" (that is, that this right is irrelevant to the decision being made).

In summary, Ms. Healey expresses her position that the probable decision about Danny's education is an incorrect one by injecting the phrase *right to education,* which packs enormous argumentative punch. How does this compare with the manner in which the phrase is used in the Riverside case?

At first glance, the differences between the two cases seem very pronounced. The use of the phrase *right to education* in the Riverside court brief is a narrow and technical one. To raise the issue of a fundamental right to education before a federal court is to request that the court subject the issue at hand (in this case, a demonstrable discrimination) to its most thorough and penetrating review. In a sense, it is a procedural matter. However, as in all matters legal, the procedural and the substantive are not easily separable. The issue that prompted the original legal action was not an abstract question of whether or not there is a right to education and whether that right is a fundamental constitutional right. Rather, it was a concrete problem of financial difficulties in the Riverside School District and the discriminatory actions of the Pennsylvania Department of Education that allegedly contributed to the economic crisis. But the resolution of the matter depends, in large part, on the prior resolution of the questions surrounding the right to education. If the right to education is ruled as a fundamental right, then the actions of the Pennsylvania Department of Education in the matter of the Riverside School District will be more closely scrutinized and will be evaluated against a higher standard of performance than if the right to education were not ruled to be a fundamental right. This obviously would substantially affect the court's ultimate position on what legal remedies, if any, should be applied to Riverside's financial dilemma.

Two aspects of the Riverside case are similar to the way the phrase *right to education* is used in the Healey situation. First, the phrase figures prominently in a cluster of statements designating that some states of affairs are (legally) unacceptable. The phrase, in itself, says nothing specific about these unacceptable states of affairs. However, in conjunction with other statements and contextual matters, it is used to indicate that such a condition does exist.

Second, it signals that the state of affairs is unacceptable in a particular way because it violates a standard that is understood to be implicitly expressed in the phrase *right to education*.

The brief filed in the Riverside case argues that the financial situation in Riverside is (legally) unacceptable and explains how and why this is so. It is quite possible to accomplish this without resorting to rights terminology. The use of the phrase, however, raises the stakes. In the analogy drawn earlier, it acts as a trump card. The court must respond to that trump card before it can render a decision.

Naturally, the court may respond in various ways, depending upon the legal merits of the case. The court may refuse to acknowledge that the trump card has been played, either by defusing the claim with legal counterarguments, or by simply ignoring the assertion. In that instance, the effective burden of proof for the unacceptability of the Pennsylvania Department of Education's actions lies with the plaintiff. Or the court may accept the trump card, acknowledging that the right to education is a fundamental right. In this case, the burden of proof shifts to the defendant, which means that the department of education would have to prove that there is a compelling state interest that renders its discriminatory actions acceptable.

Perhaps the clearest difference between the use of the phrase in the Riverside and Healey cases is what happens after the assertion of a right to education is made. In the Riverside case, any resolution can conceivably settle the discrimination issue also. Acknowledging a right to education tells the court how to decide the discrimination issue, that is, which standard of scrutiny to apply. For the committee deciding Danny's educational future, the resolution of the right to education issue does not necessarily help them decide what to do with Danny. Even if all agree that Danny has a right to education, all may not agree with what that entails.[10] This is why the two cases appear, on the surface at least, to be so different. But it should not obscure the fact that the phrase *right to education* shares a similarity of use in both circumstances.

The case of Mrs. Mason and her daughter Becky suggests a pattern, although it is somewhat different from both of the previous cases. The use of the phrase in the Riverside case was, technically, a legal one; whereas Mrs. Mason's use of the phrase is neither clearly legal nor clearly moral and might best be described as political. The use of the phrase in Danny's behalf arose out of a concern for the substance of his education; Mrs. Mason's use of the phrase arises out of a concern over transportation, an area the school board previously decided was not educational. These differences are largely of a contextual nature, however.

There is an unacceptable educational situation. Becky Mason will not be able to attend a school near her home if the state board closes the school she currently attends. When Mrs. Mason uses the phrase *right to education,* she is referring to a specific situation. She is concerned only with Becky's education. She is not concerned with a general, universal right to education even though she says, "Becky has a right to education just like everyone else." Whatever the phrase might logically entail, and despite what Mrs. Mason herself says, her articulation of a right to education is situation-specific and not intended universally.

Ironically, her use of the phrase to indicate that this outcome is unacceptable makes an appeal to a broader standard of treatment. Using *right to education* rather than a statement about Becky's needs or interests suggests that the closing of Becky's school is not personally unacceptable or unacceptable for personal reasons, but universally unacceptable or unacceptable for standard, widely accepted reasons. Mrs. Mason's position is given a presumption of objectivity even though its purpose is to promote her own interests. It is ironic that she avoids the universal scope that the phrase might logically seem to entail but utilizes the sense of universality.

The hypothetical commission studying "Human Rights in a Changing World" presents us with a counterpoint to Mrs. Mason's particularistic use of the phrase *right to education.* The commission's assertion that ". . . all persons possess . . . the right to education," is clearly a universal statement. That is, the statement speaks about a right to education held by "all persons," whatever their personal status, political situation, or geographic location.

The statement is couched in an aura of rationality. Phrases like *right to education* and *entitled to receive* tend to be taken as self-warranting since rights and entitlements are often assumed to be facts about nature, written in natural law. A claim involving one's rights is not subject to the same criticism as a claim only involving one's needs or interests.

Compare:

(a) Among the rights that all persons everywhere possess is the right to education

with

(b) All persons everywhere need to be provided with an education.

Statement (a) is more strongly worded, one that brooks far fewer rejoinders than statement (b). Almost no one would argue with (a) whereas (b) brings the obvious response "Why?" with the burden resting upon the person who made the statement.

I would argue further that a claim involving one's right to education is not even subject to the same criticism as a claim involving other specifically moral terms such as *should* or *ought.* Compare (a) above with:

(c) All persons everywhere should be provided with an education.

To utter such a statement like this is to wave a red flag at a bull. Retorts abound. "Why?" and "Who says?" are perhaps the most obvious. When one makes a claim about the same educational situation and says "right to education," it more often ends rather than encourages debate. Why does this phrase have such power? That is a story far more complex than the one told here. Here the task is simply to convince others that the phrase does, in itself, convey a sense of being rationally warranted.

What we need to remember is that the commission's statement was issued by scholars, political figures, and religious leaders on a commemorative occasion. It is highly unlikely, given that mix, that the declaration was intended literally. The phrase *right to education* is a slogan, used in a ceremonial context, intended to generate warm feelings and bring supporters to the cause. This it accomplishes.

Despite the ambiguity of the commission's statement, it nonetheless is generally understandable. In fact, if we heard this statement, most of us would probably nod our heads vigorously. Education is not as widely available as it should be. This situation is unacceptable. The commission's statement is an expression of that unacceptability.

The bishop of Pittsbury offers us another interpretation of the phrase as a slogan in ceremonial usage. However, the Pittsbury case is also quite different from the human rights commission case in that it involves very specific political perimeters. There is a specifiable place, political atmosphere, past history, cast of characters, and available political remedy. As a result, the bishop's reference to the right to education is more pointed. For the bishop of Pittsbury, the right to education is clearly linked to tuition tax credits. Quite simply, the bishop is stipulating that the phrase *right to education* should "include the parents' rights to choose the context of an appropriate education for their children."

Once again, we find the phrase used to indicate the unacceptability of a particular set of circumstances. It is unacceptable to (at least a portion of) the Catholic population that they are unable to choose the appropriate (read "Christian") education for their children unless they pay a penalty in the form of parochial school tuition. The phrase implies all this and more. As such, it is an expression of the interests of a particular constituency.

However, this expression of political interests is disguised in language that carries a presumption of rational objectivity. The use of the phrase suggests that there is an objective reason why this situation is unacceptable. Appeal to objective reasoning attempts to put the position on firmer and rational ground, whereas appeal to personal needs or interests requires further validation. Deservedly or not, the position rises above partisan politics to acquire a degree of rational credibility. A reference to the right to education seemingly needs no further validation. Its validation is assumed to already exist.

These observations link the Pittsbury case with the previous cases. The Indian Hills situation, however, is an exception to the pattern of usage.

As in the Riverside case, the use of the phrase in the *Indian Hills v. Manning* decision is a narrowly legal, technical one. Many of the observations made in the Riverside illustration hold here as well. For instance, the phrase does figure in a cluster of statements designating a (legally) unacceptable state of affairs. Yet the phrase seems to mean more than this. It is also used to refer to a self-contained legal mechanism that controls degrees of scrutiny. The court needs more compelling reasons, other than the rational tone of the phrase, to conclude that the state's funding is both unacceptable and unconstitutional. Differences in spending do affect educational quality.

Still, it is difficult to separate procedure from substance. The court would not have looked closely at the differences in educational spending unless it decided the right to education issue the way it did. So, at least indirectly, the phrase is used to imply a standard of treatment as well as a guideline for decision-making procedures. The court's last statement, that differences in spending "may be taken as evidence of a violation of a constitutional right," does suggest that the phrase implies a rule or standard of treatment and ties its substantive sense with its actual use.

We might conclude that the Indian Hills case has less in common with previously explored uses of the phrase—but we must also note the similarities of use, such as the designation of an unacceptable situation and the introduction of objective reasoning. Yet these elements are overshadowed by the reference to a particular and enduring legal mechanism, one which derives from a particular and enduring legal context.

The case of Adam Everhart and the Amish also does not fit neatly into an identifiable pattern. Everhart does use the phrase *right to education* as part of a statement about an unacceptable (potential) state of affairs. Yet he uses the phrase as counterpoint to, rather than in argument for, his position that the state should not renege on its agreement with the Amish.

However, there is a sense that he is arguing about the very meaning of the phrase. His first statement that "all children . . . have the right to education" apparently acknowledges the element of recipience, that an education is provided for those who choose to receive it. But he also apparently intends to emphasize the action or choice element when he says that "Amish children . . . cannot be compelled to claim such a right."

Everhart uses the phrase to defuse the recipience element at the expense of the action element. In other words, he uses that phrase only because he anticipates that others might use it against him. He is responding to the social context of the phrase.

Unlike other cases, Everhart does not use the phrase to shift his argument from the plane of personal interests to the plane of rationality. However, it might be that he is aware it is inherently rational and, for that reason, he chooses to defuse its power. If that is so, then this particular use shares a common element with the earlier discussions. In these cases involving educational issues, the independent argumentative power of the term *right* is acknowledged. This is so whether or not the phrase has a particular referent in any given usage.

## From Particular Cases to General Comments

Let us now return to the questions posed near the beginning of this chapter. What functions does the phrase *right to education* serve? Is there just one clearly identifiable use or are there several different functions? Does the phrase have multiple uses that, when taken together, render it a uniquely valuable linguistic tool?

The phrase does not have one clearly identifiable function but rather presents a cluster of related functions that, together, give it a multifaceted meaning. First, *right to education* generally expresses dissatisfaction with a particular state of educational affairs. Second, this dissatisfaction arises because a situation does not measure up to an allegedly objective standard of educational treatment. The phrase implies and, in a nonspecific way, expresses that standard. Third, the supposition that this objective rational standard exists quite apart from any person's needs and wants in a particular situation allows the phrase to be used to cover personal preferences within the guise of impersonal, and argumentatively weighty, standards.

There are contexts in which the phrase can have certain technical uses in addition to—or to the exclusion of—the uses in ordinary language. For example, the phrase is used in specifically legal contexts either to request the strict scrutiny of the court of some governmental action or to refer to this established legal mechanism of scrutiny. In these instances, though the phrase carries some narrow legal meaning, it is still used in a manner similar to the ordinary language referred to earlier. It figures in discussions regarding unacceptable states of affairs in education, it appeals to certain standards of educational treatment, and it tends to "trump" other aspects under consideration.

To use the phrase in these three ways is to use it as a political weapon—to promote one's own interests under the guise of championing objectively valid moral and educational standards. If we question how this is possible, we are led back to the earlier suggestion that the phrase can best be thought of as a slogan. It is a slogan that has undergone a process of reification, which has taken the facade of a self-evident principle grounded in the law of nature, and is now interpreted literally, no matter what its contextual use.

Like a slogan, the phrase is a shorthand symbol for a complex series of ideas with both rational and emotive force. It is, as emotivist moral philosophers have noted about moral terminology in general, used as an expression of personal approval or disapproval, prescription or injunction. Yet it is, at the same time, used to formulate standards that are presumed to be rational. Further, in addition to these emotive and rational elements, it contains a transitional or transformational element in that it can take an assertion about needs and wants in education, cast them in the language of rights, and seemingly transform them into objective reasons. It is important to remember that, though the transformation is from subjective to objective, from irrational wants to rational reasons, there is nonetheless an emotive element still involved. People tend to approve of that which is putatively rational.

The move from emotive to rational considerations ostensibly provides its own justification, but really it obscures the fact that the standard expressed as a right to education is in need of its own justification. That standard—the ideal—is, in fact, what the discussion is about. "What should be done in this particular education situation?" elicits the assertion of the right to education. If we can answer this question, then we have gone a long way toward determining what a right to education is and what it is worth. Unfortunately, the use of the phrase sometimes halts or diverts discussion away from the question of what we should do, toward more abstract, less immediately helpful solutions. The discussion drifts away from "the just thing to do here and now" toward "justice."

The phrase would not be so argumentatively effective if it were just an ambiguous slogan. The use or acceptance of a slogan is not logically tied to the denial of/or acceptance of anything else. As a result, the phrase is marvelously flexible. As the seven examples illustrate, the phrase can accommodate decisions as diverse as mainstreaming, equal funding, special scrutiny of governmental action in education, school desegregation, neighborhood schooling, and free public schooling, to name a few. None of these express the real or correct meaning of the phrase. Rather, together, these examples point to the importance of interpreting the meaning of the phrase or slogan in its particular context. We need to further explore what these meanings have in common and why it is that such diverse outcomes can result from the use of a single phrase. Keeping in mind the suggestions in this chapter that the use of the phrase *right to education* as a political weapon involves (1) an expressive or emotive element of dissatisfaction, (2) a rationalizing element that implies an educational and moral standard, and (3) a transformational element that moves from the realm of the expressive to the rational, we now turn to a consideration of the context in which the phrase typically and appropriately appears.

## Notes

1 For a discussion of this point, see Hannah Pitkin, *Wittgenstein and Justice* (Los Angeles: University of California Press, 1972), pp. 63–65.

2 Israel Scheffler, *The Language of Education* (Springfield, Ill.: Charles C. Thomas, Publisher, 1969), pp. 36–46.

3 B. Paul Komisar and James McClellan, "The Logic of Slogans," in *Language and Concepts in Education,* ed. B. Othanel Smith and Robert H. Ennis (Chicago: Rand McNally and Co., 1961), pp. 195–205.

4 Scheffler, *Language*, p. 36.

5 Komisar and McClellan, "Logic," p. 201.

6 Ibid., p. 205.

7 It would not be hard to imagine how this might be. Consider the case of Horace Mann in nineteenth-century Massachusetts. Mann, as state secretary of education in the most educationally progressive state in the country, was pushing the implementation of a system of common and universal schooling. He saw this as a solution to the problems of unassimilated immigrants and changing workforce requirements in American industry. However, he argued for common schools, using the rhetoric of the right to education.

8 The common schools for which Mann argued are now a reality. Rather than disappear once its task was completed, the phrase *right to education* has been appropriated for a variety of uses.

9 I am indebted to Ronald Dworkin for the image of individual rights as trump cards. *Taking Rights Seriously* (Cambridge: Harvard University Press, 1978), p. xi. However, Dworkin seems to be saying that individual rights *are,* as a matter of moral fact, reasons that trump or outweigh other reasons. I am saying only that they are used in speech *as if* they were privileged reasons.

10 This follows Komisar and McClellan's observation that the acceptance of a slogan is not logically tied to the acceptance or denial of anything. "Logic," p. 201.

## 5

# *Right to Education* in Relation to Persons and Power

Each time the phrase *right to education* is spoken or heard, it is done so in context. There is a determinable set of context conditions that govern the use of the phrase. When the appropriate conditions are present, the phrase makes sense; when they are absent, the phrase makes "non-sense." There may be a wide range of appropriate conditions or there may be just a few. The point is that there are limits, broad and malleable though they may be, to the appropriate and understandable use of the phrase. The context conditions constitute, in effect, rules of usage.

For example, it makes sense for a parent to assert her daughter's right to education before a school board deciding the fate of special education for the gifted. However, it does not make sense for that same parent to assert her daughter's right to education before the family dog who is lying on the girl's English book. Of course not! Those who hear the parent speak in this context will look at her oddly and wonder what she might mean when using that phrase. What are the different context conditions operating in each case that contribute to either sense or non-sense? Why is it that the seven examples outlined earlier in this book strike us as sense-making? What are the context conditions that govern the appropriate use of the phrase? There appear to be four. The phrase is appropriately used in situations (1) when persons' and/or groups' interaction is involved (social), (2) when the distribution of a benefit is involved (political), (3) when public reasons rule over private desires or wants (public-rational), and (4) when education is the central overriding concern (educational). Each of these conditions will be considered in turn, drawing upon the hypothetical examples cited earlier.

Before turning to the main thrust of the chapter, it is important to remember that context conditions are both linguistic and practical, both general and particular. The four conditions cited above govern the particular use of the phrase *right to education* in practical situations. There are also certain linguistic and general characteristics that form the backdrop. As we proceed with a contextual analysis, we must be cognizant of the measure of meaning that a particular word or phrase carries within itself. To agree with Wittgenstein that one must understand how a word is used in order to understand fully its meaning is not to deny that the word has a powerful meaning unto itself. Words such as *right* and *education*, as well as the somewhat more recent phrase *right to education*, have been generally defined and are generally accepted as common usage, even when the particular usage molds or alters the meaning.

One difficulty is that these terms are not always defined in the same way. Definitions may vary according to the purposes of the person offering the definition.[1] Still, within this range of variation, definitions can set limits on the way in which a word or phrase is used.

The denotative meanings of the words *right* and *education* were discussed briefly in chapter 2. Here I want only to offer a fairly common, general definition of each term so that we may keep in mind the linguistic aspect of the context in which the phrase *right to education* is used.

Right, as in the "the right to ____," is commonly defined as "a power, privilege, faculty or demand inherent in one person and incident upon another."[2] Education is often thought of as "the means by which a society attempts to perpetuate certain aspects of its culture through purposeful teaching and learning."[3] Neither of these is the definition of the word in question, but each does give us a sense of the word's denotative meaning.

When the two terms are joined in the phrase *right to education*, there is not a readily available, clear referent for that phrase. It is not as simple as (the meaning of) *right* plus (the meaning of) *education* equals (the meaning of) *right to education*. In fact, it is almost as if the use of the two terms together in a single phrase alters the meaning of each term slightly, adding a new dimension or sense of meaning to the already established definition. Until the phrase *right to education* and phrases referring to other so-called welfare rights were coined, the notion of an individual right leaned more heavily toward individual action than toward recipience. That the right-holder is entitled to receive some positive benefit from or treatment at the hand of some other person is a relatively recent development. Some elements of the situation apparently rendered "right to education" an appropriate locution while other (social welfare) elements of the situation forced an extension of the meaning of the discrete word *right*.

In addition to acknowledging the denotative meaning that the phrase embodies, we must also be aware that the phrase *right to education* did not originate in a linguistic or cultural vacuum. It evolved against a rich background of claims to rights of various kinds and discussion about education in general based upon Western (especially Judeo-Christian) conceptions of civilization. The notion of individuation—that is, the cultural development and emancipation of the individual from the group by the definition of rights and obligations—forms the context that allows any talk of individual rights and personal education to make sense. Adda Bozeman refers to this concept as a primary structuring idea.[4] Specific individual rights are dependent upon a commitment to the idea of individuation, and may be seen as expressions of certain societal values, reified over time.

The phrase *right to education* is actually middle-aged in comparison to other kinds of rights. Adda Bozeman observes:

> The rights that really mattered in the first century of statehood were civil liberties and political freedoms with which Americans were endowed as citizens and which were eventually listed in the Constitution and the Bill of Rights . . . Rights to education, . . . and so forth were unknown to Locke and the natural rights theorists of the eighteenth century. They were developed gradually in the United States as part of social legislation and in response to the demands of industrialization and educational philosophy. . . .
>
> [R]ights to culture were neither recognized nor envisioned (until) the last decades of the twentieth century (so that now) "Black" rights, "Latino" rights, "Chicano" rights, and "American Indian" rights are what really matter.[5]

It would be too much to explore the cultural background of the phrase at this time. But it would be irresponsible not to acknowledge the particular context any time a person asserts a right to education.

Now we may return to the main thrust of the chapter, the identification of four aspects of a given context that renders the use of the phrase appropriate. The situation must be (1) social, (2) political, (3) public-rational, and (4) educational.

## The Social Aspect

To say that a situation is social is only to say that it is a situation that involves persons' or group's interaction. A person can assert the right to education either on his or her own behalf or on behalf of another person or group. Other persons, whether singly, in a group, or within an institutional structure, can hear and respond to this assertion. Finally, persons, singly or as members of a group, can have a right to education.

It is important to emphasize that the social criterion does include persons as individuals, as members of a group, or as part of an institutional structure. Mrs. Mason is acting on her own behalf and on behalf of her daughter. The bishop of Pittsbury is acting as a representative of those Roman Catholics who wish to send their children to parochial schools. The members of the court in the Indian Hills case are functioning as an arm of the institutional structure of government. In each case, the situation is a social one.

Usually the assertion of a right to education is presented to a broader "public" for response. That "public" may be a particular institutional organization, a far-reaching array of individuals, or some combination of both. Neighborhood Legal Services appeals to the court against the state department of education to help the Riverside School District. The Special Commission on Human Rights presents its case for a general right to education before the world citizenry. Representative Everhart speaks on behalf of the Amish way of life to his constituents, but also to his colleagues in the Congress who have the power to properly respond to the issue. Again, in each case, the situation is a social one.

That the context for use of the phrase be social, by itself, accomplishes little. Alone it allows many situations that would be rejected by further criteria. The criterion that the context be political, rational or public, and educational needs to be spelled out in order to give it some punch.

## The Political Aspect

Situations in which the right to education is asserted may be characterized as political. Political scientist David Easton has described politics as "the authoritative allocation of values for a society."[6] Only those situations that relate to the authoritative allocation of values in our society form an appropriate backdrop for the assertion of a right to education. There is much here to address.

If there is an allocation of values, then there is a decision-making process at work. Decisions are made not about values in the abstract but about the concrete benefits—tangible and intangible—that are of value in a society. Distribution of benefits can include both giving and taking away.

The political is not restricted to the moment of decision making but also encompasses the circumstances leading up to a decision. In the case of Danny, the moment of decision was clear and present. The special education committee had to decide how to treat him, and Ms. Healey addressed that decision with the assertion of Danny's right to education. However, the bishop of Pittsbury, in arguing in favor of tuition tax credits, was not facing a moment of decision. Rather, he was trying to create a moment of legislative decision making by expressing his dissatisfaction with the status quo and generating broader public awareness and discussion of the issue. Both of these instances are political situations.

If there is nothing to decide and no dissatisfied party seeking a decision, then the context is not political. If it is not political, then there is no sense-making reason to assert a right to education. If, for example, there were uniformly good educational opportunities throughout the world, we would wonder what the purpose and sense might be in the special commission's call for a general right to education. Would its purpose be merely to state the obvious? It is peculiarly because there are not uniformly good educational opportunities around the world that the commission's statement makes sense, whether or not people agree with it. Representative Everhart's defense of the Amish is another example. If there were no plans to alter the relationship between the Amish and the state board of education, there would be no need for Everhart to raise the right to education. If he did so, the response might be "Fine, but what's the point?" The assertion loses much of its meaning when removed from a political decision-making context.

Decisions are made, of course, about benefits, that is, about commodities of any kind that are valued. Each of the hypothetical cases under consideration here involves a benefit that is specifically of great value to the person claiming the right to education. Were the commodity not of value, it would be odd to assert a right to education. For example, it seems reasonable for Mrs. Mason to assert a right to education on behalf of Becky in order to obtain transportation or neighborhood schooling since Becky is a youngster who usually walks to school. It would seem unreasonable for her to assert a right to education were Becky a high school student who usually drives to school. The chief difference is the status of the benefit. The first case involves an effective benefit; the second involves a useless one and, thus, no benefit at all.

A similar observation may be made regarding the bishop of Pittsbury's assertion of the right to education of parochial school students. At today's parochial school tuition rates, a tuition tax credit is an effective savings and, therefore, a benefit to those parents with children in parochial schools. Twenty years ago, when parochial schools charged no tuition, a tuition tax credit was not an effective benefit. The assertion of a right to education would have been nonsensical because there was no actual benefit to be distributed.

The appropriate assertion of the right to education requires that there be a benefit at stake that is valued by the person asserting the right. The real question is whether the confirmation of that benefit in the given situation is of value to society.

This societal decision-making process requires a different sort of standard than the individual decision, which leads to the third contextual condition for the proper use of the phrase *right to education*. The situation must be public-rational.

Before moving to this third requirement, however, there is one additional observation that needs to be made regarding the "authoritative allocation of values in a society." That involves the role of authority or power. By and large, the assertion of a right to education is made on behalf of the (institutionally) powerless to the (institutionally) powerful. Danny, the residents of Riverside, Becky Mason, the undereducated people of the world, students in parochial schools, the taxpayers of Indian Hills, and the Amish are all powerless to effect the educational changes that they believe are needed or that others believe they need. If they had power, there would be no need to appeal using the rhetoric of a right to education.

For instance, if the officials in the Riverside School District could simply phone officials of neighboring districts and say, "By the way, we'll be sending our students over to your schools from now on because your schools are better than ours," there would be no reason to bring suit in the first place. That, of course, is not the way it works. Those who wish to effect institutional change must approach those who hold institutional power with reasons that are acceptable as institutionally valid. The assertion of a right to education is one such reason. This is not to say that those on whose behalf a right to education is asserted are powerless. There are all sorts and forms of power that can be mustered to affect decision making. But it does mean that they are not the persons actually making the decision in a specific set of circumstances.

It should also be noted that the persons who actually assert the right to education, usually on behalf of another, are not powerless either. In fact, they may often be persons with some degree of institutional power and influence. Ms. Healey and Representative Everhart can actually participate in the decision-making process regarding, respectively, Danny and the Amish. However, they do not have sole decision-making power. If they did, the rhetoric of right to education would be superfluous. Even the court in the Indian Hills decision, which in one sense does have sole decision-making authority, cannot alone enact and enforce the educational program, but it can elicit the support of those with executive authority to carry out the decision. The right to education signals the societal value that is being upheld.

The net result of the political dimension is that *right to education* is not a phrase generally used among equals in a decision-making process. It is a phrase that arises in the face of an imbalance of power when those who are making the decision are not those who stand to gain or lose the most by its result.

## The Public-Rational Aspect

As noted previously, the decision made (by those with the institutional power to make that decision) is only effective and acceptable when the benefit valued by one person or group is of value to society generally. That societal value decision can only be made according to standards that are, in some sense, societal. It is only in such a context that the use of the phrase *right to education* is appropriate.

Consider the following case. A student wishes to cheat on a take-home exam by collaborating with a friend. The friend declines to help. The student says, "I have a right to education. You have to help me with this exam." It is not likely that the student's reason, "I have a right to education," will convince the friend to help him, because it is the wrong kind of reason. The student offered a public, impersonal reason where a private, personal one would be more appropriate. I suspect the friend would be more susceptible to reasons like, "If I flunk this, I won't be able to play baseball. Please help me."

The use of the phrase *right to education* is appropriate only in situations where public reasons are thought to rule over private desires, wants, and needs. Public reasons are precisely those reasons that are characterized as objective, impersonal, and rational; they are free of the subjective, the personal, the irrational. Situations in which the right to education is appropriately asserted may be characterized as public-rational.[7]

To demonstrate the relationship between public-rational situations and the use of the phrase *right to education*, let us consider some examples of inappropriate usage. We will first look at situations that may be characterized as personal or private in which the phrase is improperly used. We will then turn to situations where a public-rational reason is suitable, but a personal justification is utilized instead.

Suppose that Ms. Healey is speaking with another special education teacher about Danny, and suppose that Danny just brought Ms. Healey some dandelions that he picked from the school lawn. Ms. Healey says, "That Danny is really a nice boy despite his handicap. Since he has a right to education, I think I'll give him some extra attention today." Her reference to Danny's right to education is inappropriate and irrelevant. The situation is personal. She does not need a public-rational reason to be attentive.

Or suppose that Mrs. Mason approaches her neighbor and says, "Becky needs a ride to school. Since she has a right to education, why don't you drop her off?" Again, this is a personal situation. The neighbor may do Mrs. Mason the favor of taking Becky to school, but it is not likely that the reason would be compelling. It would make more sense to say "Since I'm not feeling well, could you take her for me?" It does not make sense to mention Becky's right to education.

We could also imagine a husband saying to his wife, "I feel badly that kids in parochial schools have to pay such high tuition rates. Since those kids have a right to education too, let's help them a little bit by making a donation to the Catholic High

School." However, there is clearly something odd about this scenario. The insertion of the public-rational phrase *right to education* does not strengthen the man's case for making a donation. He could omit the phrase altogether. Or he could say something like "Since we're in pretty good shape financially, let's help them." This is the sort of personal reason that would be appropriate in a case of personal decision making.

The three instances mentioned are personal contexts in which feelings, needs, favors, or helping others are relevant considerations. The phrase *right to education* is not appropriate in such situations because the appeal is based on personal values (which may include caring for a friend, supporting one's spouse, etc.) rather than public values. We can further emphasize the relationship between the phrase *right to education* and public-rational situations by imagining examples of the latter in which personal reasons are inappropriately and ineffectively used.

Consider the Neighborhood Legal Services brief filed on behalf of the Riverside School District. What would the reason be if, instead of citing a right to education, the brief stated, "These young black people really want an education. Since they care so much, our educational system should provide for them"? This sort of rhetoric might have some important psychological effect, but it is not the kind of reason that is compelling in a public-rational situation. The judge would very likely say, "This is all well and good, but I need legal reasons." Talk about laws and justice and rights fits the bill far better than talk about wants and cares.

Or suppose that the court in the Indian Hills case based its decision not on the right to education but on its observation that "the staff and students at Indian Hills have worked very hard to have a good school district; they deserve the reward of increased financial support." There is no denying that a personal evaluation such as this may sway the court's decision. However, in the legal realm and in a public-rational situation, when referring to a publicly held, reified value, it is not appropriate to say so. How hard a person tries or what he or she might somehow "deserve" are less broadly compelling reasons than reference to the right to education.

Finally, imagine Representative Everhart stating in his campaign speech, "These Amish are nice folks. They aren't causing us any trouble, so let's not cause them any trouble." This may very well be how Adam Everhart feels about the issue, but again, it is not likely that he would say so in a public forum. And while we might appreciate his candor if we agreed with him on the issue of the Amish and public education, it is unlikely that we would alter our opinion if we disagreed. Only if the representative raised the specter of some difficult-to-dispute societal value, phrased perhaps as the right to education, might we be inclined to reconsider our position.

It is no crime to use the phrase *right to education* in inappropriate circumstances or to fail to use it in appropriate circumstances. However, if we wish to be understood and to be effective in bringing others to our way of thinking or acting, then it is important to speak of a right to education in public-rational contexts.

The sorts of situations that we have described thus far—those that are social, political, and public-rational—are situations in which justice is at stake.[8] That is not to say that the social, political, and public-rational elements are features of justice or that this is how we recognize the presence of justice. Rather, again from a Wittgensteinian perspective, these are examples of talk about justice. The phrase is used in a variety of situations where justice and education cross paths.

## The Educational Aspect

If we maintain that we may use the phrase *right to education* in situations where justice and education meet, we must say more about the educational context. One may define education quite narrowly as, for instance, all those activities involved in schooling or, quite broadly, as encompassing all those activities involved in a person's development. Each of the seven hypothetical examples of appropriate usage discussed here qualify as educational no matter which view is accepted, because each example involves some type or level of schooling within the broad context of personal development. However, it must be clearly noted that each example focuses on a somewhat different, largely tangential aspect of education or educational benefit.

If we were to ask whether education was the central concern in the case of Danny's special education or the case of the special commission's report, the answer in both instances would be an unequivocal yes. How Danny is schooled and how he is to develop are clearly the point of the special education committee's deliberations. The special commission is just as concerned that the undereducated of the world be provided with schooling as a means of personal development.

In the other cases, it is not so clear that basic schooling is the central concern. The Riverside case focuses on desegregation in the schooling process. Mrs. Mason's concern for Becky centers on transportation to and from school. The bishop of Pittsbury is concerned with the financial capability of Roman Catholic parents to provide their children with the schooling of their choice. In the Indian Hills case, the focus is on how the burden of paying for public schooling is shared. One could argue that, strictly speaking, these are not educational issues at all. But to do so is to be politically and economically naive. Without the means—political, physical, or economic—to participate in schooling, one effectively has no schooling. Therefore, even where the specific concern is on the means of participation rather than on the schooling itself, the general and central concern is still education.

It is less clear that education is the central concern for Representative Everhart and the Amish. Although it is true that education provides the backdrop against which the issue takes shape, the real concern is personal freedom. It is true that the Amish are concerned with the personal development of their young people and that this is why they do not wish their children to remain in the public schools beyond the eighth grade. The Amish want to have a greater degree of communal control over the development of their children, a goal they can only achieve by maintaining their own educational system. As a result, their primary concern is their freedom to act rather than their need for educational benefits.

To understand why I, nonetheless, interpret this in an educational context and an appropriate use of the phrase *right to education,* we need to remind ourselves how Representative Everhart uses the phrase. He uses *right to education* to respond to and defuse any situation that might emphasize the recipience of educational benefits at the expense of personal choice. Although he refers to the issue as a freedom of action, he anticipates that others may view the issue as an educational one. It is the latter context that he is addressing.

I maintain that an educational context and, therefore, an appropriate context for the assertion of a right to education, is any context in which education is the central concern. This formulation clears the way for the use of the phrase in certain contexts in which it is not currently used. It is conceivable that one might use the phrase in disputes over access to educational materials in the various media. One might argue, for example, that the government should subsidize television sets for the poor so that these children may benefit from readiness programs such as "Sesame Street" and base such an argument on a right to education. Also one could argue that the broadcasting of congressional hearings is an important part of the education of our citizenry and should be available to all, not just to those who can afford cable television. The phrase *right to education* might figure prominently in such an argument.

It is hard to deny that education is generally equated with schooling in our society. However, our notion of what constitutes schooling has altered and developed since the first compulsory education law was enacted in Massachusetts in 1642. From compulsory learning to reading the Bible to compulsory common elementary schooling to expanded secondary education programs to community colleges, the understanding of a governmental role in education has developed gradually. There is no reason to suppose that it will not continue to develop further, possibly in the direction of greater access to the kinds of educational media and materials mentioned earlier. This makes the use of the phrase in such situations at least potentially appropriate.

To say that the appropriate context for use of the phrase is any context in which education is the central concern does eliminate some situations arising in our educational institutions. For example, a furloughed or fired teacher may protest his dismissal based on his right to a job under the tenure agreement, but it would make no sense at all if he based his protest on a right to education. Similarly, a community recycling group may argue that it should be granted use of school facilities based on its members' collective rights as taxpayers, but it would be quite odd were the group to base its position on a right to education. Although either educational personnel or educational facilities are involved in these cases, the central concern is not education. These situations would not be appropriate for the use of the phrase.

## *Right to Education*: Most Appropriate?

The preceding discussion demonstrates that there is a determinable set of context conditions that render the use of the phrase *right to education* appropriate. There are four:

(1) social, (2) political, (3) public-rational, and (4) educational. When these conditions are present, the phrase is meaningful; when they are not, there is confusion.

The above discussion of appropriate context conditions prompts an important question: Is *right to education* the only, or even the most appropriate, phrase for use in contexts that are social, political, public-rational, and educational? Would, for example, talk about what one ought to do function just as well and be as argumentatively effective as talk of a right to education?

The answer is both yes and no. It would certainly be meaningful for the special commission to suggest in their report that "(S)ociety ought to provide a minimum level of education for all." However, it would not be as argumentatively effective because talk about should and ought does not have the same aura of legitimacy as talk about one's rights. It has not undergone the same process of societal reification in our culture as has the notion of individual rights. If one talks about should and ought one is at pains to produce the principles or standards that form the source of those terms. A rights claim is self-warranting, requiring no further justification.

Berger and Luckmann, in their discussion of the process of the reification of (social) concepts, note that "a body of knowledge, once it is raised to the level of a relatively autonomous subuniverse of meaning, has the capacity to act back upon the collectivity that has produced it."[9] Once the phrase *right to education* is reified, and in the process legitimized, we are bewitched into thinking that the phrase (and its referent) has an existence independent of human experience and beyond human control. Then when we hear that a person has a right to education, we may dispute what it means, but we rarely question whether the assertion itself is true or false. We unwittingly grant the phrase the power to trump other reasons in an argument.

To suggest that *right to education* is the most argumentatively effective phrase is not to conclude that it is the best language to use. The best language is that which enables a just resolution to a conflict. Invoking a right to education may enable one party to win the argument and claim a benefit, but it does not guarantee that the result is just. Arriving at a just resolution requires that all relevant reasons be weighed and that the claim of a right to education be a just decision.

According to political theorist Hannah Pitkin, the point of deliberation and debate—in social, political, and public-rational contexts—is not merely to resolve the dispute (which would result if one side or the other "wins" the argument), but to resolve the dispute in such a way that the "we" (sociopolitical association) is preserved and even strengthened.[10] If Pitkin is accurate, then talk of a right to education may not be the best language to use because it is adversarial language that fragments the "we" rather than preserves it.[11] Because the phrase is *assumed* to express a shared societal value, the very use of the phrase eliminates open discussion and thus prevents the ascertaining of societal values, which is, of course, the whole point of political decision making.

## Summary Comments

The preceding analyses of the phrase *right to education* from an outside perspective yields three general observations. First, appropriate context and usage of the phrase is sociopolitical. Therefore, the concept itself conveys a meaning that is both social and political. Although due attention must be paid to the individual on whose behalf the assertion of the right to education is made, one must be careful not to construe the meaning of the phrase in a manner that is narrowly individualistic.

Second, the suggestion that *right to education* may commonly be used as a slogan, a slogan that has undergone a process of reification, should at least flash "Caution!" to those who seek to determine the core meaning of the phrase. If *right to education* has been used to summarize varied concerns in a concrete situation, then it is not enough to focus on the phrase as an abstract moral concept or a strictly legal mechanism. Also, if the notion of a right to education has been reified until it has more presumption of reality than the concrete situation, then one must be critical of the supposedly obvious values that the phrase entails or encompasses.

Third, talk about a right to education emerges where educational justice is at stake. That is, the phrase is part of the ordinary language of justice. It enters discussion in our everyday world as an act of justice. To raise the specter of a right to education is an attempt to generate what one takes to be just.

A difficulty arises, however, due to the reified power of the phrase. Because it may be used to divert discussion away from the concrete and toward the abstract—away from the personal and toward the impersonal—its use may stymie rather than encourage attempts to determine the just response. If a right to education automatically wins an argument by virtue of its reified power as a trump card, then there will be no open discussion and strengthening of societal values. If justice is closely linked with shared societal values, then it seems unlikely that the just response can be determined without such an open discussion.

We must now turn toward the phrase from an inside perspective—to look at the experience of justice or injustice that prompts a person to utter the words *right to education*. Chapters 6, 7, and 8 will be devoted to this task.

## Notes

1 Israel Scheffler's discussion of stipulative, descriptive, and programmatic definitions is extremely helpful in understanding this point. *The Language of Education*, pp. 12–35.

2 For an extended discussion of the many senses of the word *right*, see *Black's Law Dictionary*, rev. 4th ed. (1968), s.v. "Right."

3 For a discussion of the range of definitions of *education*, see Jonas Soltis, *An Introduction to the Analysis of Educational Concepts*, 2nd ed. (Reading, Mass.: Addison-Wesley Publishing Co., 1978), pp. 6–11.

4 Adda Bozeman, "The Roots of the American Commitment to the Rights of Man," in *Rights and Responsibilities* (Los Angeles: University of Southern California Press, 1980), p. 52.

5 Ibid., pp. 81–82.

6 David Easton, *The Political System*, 1st ed. (New York: Alfred A. Knopf, 1953), p. 129.

7 In a Wittgensteinian analysis of political discourse, Hannah Pitkin highlights the public quality of the language used in most political situations. She suggests that political discourse is concerned with questions of human action cast in a general, impersonal mode. She states that personal relationships and personal responsibility are not the point of political discourses. In political discourse, we do not purport to speak for ourselves but rather for some broader interest such as the very maintenance of society. The focus is on public actions, especially the actions of institutionally organized groups. *Wittgenstein and Justice*, pp. 204ff.

8 As Hannah Pitkin has observed, "Justice is a concept human beings have developed in their dealings with each other; it applies to persons and their institutions." *Wittgenstein and Justice*, p. 305.

9 Peter Berger and Thomas Luckmann, *The Social Construction of Reality* (Garden City, N.Y.: Doubleday and Co., 1966), p. 86.

10 Pitkin, *Wittgenstein and Justice*, p. 215.

11 Daniel Maguire, in *A New American Justice*, suggests that the use of rights talk harbors a native, countersocial litigiousness. He says, "'Rights' is heavy with defensive connotations in American parlance. 'I have a right to it and you don't' is what it says. The chip is upon the shoulder and the frown is upon the brow." p. 72.

# 6

# Self-Involvement, Responsiveness, and Generality

Up until this point, our primary focus has been on the purposes for which and contexts in which the phrase *right to education* is used. This emphasis on usage has the meaning of the phrase as its ultimate target, following Wittgenstein's maxim that "meaning is use." The focus now shifts from the use of the expression to the experience of the user. Rather than examining how the phrase is used, we shall examine how the experience of the person who uses the phrase prompts its assertion. What factors lead the speaker to say, "right to education"? While exploring this question, the meaning of the phrase remains the primary target of study.

We shall examine in three steps the experience of the person who asserts a right to education. This chapter will be primarily concerned with the typified features of talk of a right to education as it expresses the experience of justice in education. Chapter 7 will describe the experience that prompts a person to assert a right to education. Chapter 8 will explore how a person's concrete perspective limits or alters the meaning conveyed by the phrase *right to education*.

## Typified Features[1]

There are, I suggest, three typified features of the claim of a right to education as it expresses the experience of justice in education. They are (1) the self-involving nature of the language of justice, (2) the responsive character of talk of a right to education, and (3) the link between the right to education as a general rule and common goals. Before exploring each, I need to offer one qualification and one general observation.

First, there are other words in addition to *right to education* that can express the experience of justice in education (such as fair, equal, and free). But none function as a typified system of expression in quite the same way that talk about a right to education does. Talk about a right to education is a shorthand method for naming the concerns of justice. The concept of a right to education is a succinct way of expressing a complex social state of affairs.[2]

Now consider this observation. As indicated earlier, we are concerned with how the expression *right to education* is capable of conveying meaning, in order to uncover what that expression means. Words are instrumental to the formulation of the meaning; that is, they serve to carry out an intention. If that intention is unknown or misconstrued, then the intended meaning is not conveyed. When words are clearly metaphorical, or clearly petitioning, or clearly prescriptive, or even clearly theoretical, we understand the intent of the speaker and comprehend the meaning accordingly. However, when words appear to be factual and intended literally, we may not understand the speaker nor the meaning. Talk of a right to education is an example of this.

In my earlier discussion of the surface grammar of hypothetical statements, I noted that implicit in any statement where the phrase *right to education* appears is the simple claim that *x* has a right to education. This claim has the semantic appearance of a statement of fact, one that is either true or false but not both.

Now it is possible to imagine both a context and a speaker in such a way that the statement is factually intended. One who holds the existence of natural law to be self-evident and who includes among the provisions of natural law that all persons have a natural right to education may mean this claim quite literally. However, this context is more a theoretical matrix in social philosophy than an ordinary experience in the everyday world.

From the discussion of the various uses of the phrase *right to education* in chapter 4 it is clear that assuming the rights claim as fact can be misleading. Even where the statement involving the right to education is intended to express a factual matter, it is not the question of someone's rights but of someone's educational circumstances. More often it constitutes a metaphorical expression of the dignity of the individual human being, formulates a (presumably defensible) request for fulfillment of some need or interest, prescribes one's actions or reactions in a given context, or is some combination thereof. This is true even when it may be in the interest of the speaker to give the appearance of dealing with factual matters. We cannot assume that this language of justice, in spite of its surface grammar, is factual language, and we must not respond to it as if it were.

The discussion in this chapter of the typified features of talk of a right to education bears out the observation that the phrase does not simply refer to fact. That is, it is not part of a statement that is true or false independent of present circumstances. If the phrase *right to education* may be characterized as (1) self-involving and (2) responsive, then it cannot be separated from the set of circumstances in which it is spoken. Further, if the phrase becomes (3) a general rule in the framework of common goals, then attention must be paid not only to its objective meaning, but also to the way it has evolved. We turn now to these essential features that best express the experience of justice in education.

## Right to Education as Self-Involving

Perhaps the key feature of claim of a right to education as it reflects the experience of justice in education is that it is self-involving.[3] A self-involving assertion is one (1) that commits the self to further action or (2) that discloses self of the "speaker" to the "spoken to." Self-involving language differs from scientific language in that scientific language has been devised for specific purposes such as writing reports or describing phenomena, theories, and paradigms. It is scientific to the extent that the speaker has no subjective involvement in the speech. That is, it is impersonal, objective, informative, and spoken by a spectator. Self-involving language is personal, subjective, emotive, and spoken by an actor.

This can be illustrated by focusing on the phrase *right to free speech*. When one asserts a right to free speech on one's own behalf, one is revealing something of one's own need, interest, and/or value. To say, "I have a right to free speech," might be to forcefully proclaim my need to express my position on a given issue or to indicate my interest in maintaining an atmosphere of free expression.

When one asserts or acknowledges a right to free speech on behalf of another, one is committing oneself to further action. If I say, "You have a right to free speech," then I am also saying that, other things being equal, I should not impede your speaking freely. In fact, I am saying even more. I am saying that I shall not impede your speaking freely. In acknowledging your right, I acknowledge a prescription ("should") that I incorporate into my own intentions ("shall"). The "I" is both individual and corporate. To acknowledge your right to free speech is not only to make it part of my intentions to refrain from impeding you, but also to admit a basis in societal values for this prescription and intention.

The phrase *right to education* differs from the phrase *right to free speech* in two important ways. First, *right to education* appears in contexts in which societal benefits are distributed rather than in contexts in which individual actions are restricted as is the case with the phrase *right to free speech*. As a result, the question of commitment to further action is a more far-reaching one. In acknowledging a right to free speech, one commits oneself not to interfere but makes no positive commitment to see that the right-holder does, in fact, speak out. In acknowledging a right to education, surely one commits oneself not to interfere with the person's educational pursuits. The interesting and crucial question is whether one also makes the positive commitment to provide an education for the right-holder. If so, what is the force of this commitment?

Second, the phrase *right to education* nearly always figures in a third person statement. We do not encounter Becky at the school board meeting saying, "I have a right to education"; rather we encounter Mrs. Mason speaking for Becky. We do not generally encounter students in parochial schools saying, "We have a right to education"; rather we encounter the bishop of Pittsbury speaking for those students. It would be conceivable for Becky to say, "I have a right to education," or for the bishop of Pittsbury to say to the parochial school students in his diocese, "You have a right to education," but it simply does not happen often. This is because the phrase *right to education* concerns adults speaking to adults about children, which is a direct result of the way most of us feel about education—that it is primarily schooling for the young. As the concept of education expands (assuming present trends continue) to encompass more adult programs and greater access to various educational media, we can anticipate more claims of a right to education couched in first-and-second person terms. For now, however, the common use of the phrase is in the third person.

The temptation is to think that because the phrase is attributed to a third person the statement "Danny has a right to education" is an informative, impersonal declaration spoken by a spectator and is, therefore, not self-involving. We must note, however, that this statement is not made about Danny, but on behalf of Danny. The distinction is quite important, but only understandable in context. When Ms. Healey speaks to the special education committee, she is petitioning on behalf of Danny for a particular educational treatment. There is something of Danny revealed in expressing his right to education; his need and interest in expanded educational opportunities comes through clearly. But there is also something of Ms. Healey as speaker revealed in her use of the phrase *right to education* on Danny's behalf; she is disclosing something of her own values and her own perception of societal values. As long as this disclosure of value is part of the use of the phrase, it is self-involving language.

Representative Everhart's speech on behalf of the Amish presents a similar example. He reveals the interest that the Amish people have in educating their own children in their own way. At the same time, he gives voice to the value that he places, and that he believes society should place, on freedom of choice in educational matters.

The situation is slightly different for Mrs. Mason and for the bishop of Pittsbury. Each reveals something of the needs and interests of the party on whose behalf they assert the right, and each also reveals something of his or her own values. In addition, each speaker reveals something of his or her own needs and interests. Unlike Ms. Healey or Representative Everhart, Mrs. Mason and the bishop of Pittsbury each have something to gain personally.

Becky needs transportation to school and Mrs. Mason values such extraeducational services. In addition, Mrs. Mason has her own interest at heart. If the district does it, she does not have to!

Similarly, parochial school students and their parents have an interest in, and in many cases, a need for financial relief. The bishop apparently values educational pluralism that provides accessible alternatives to public schooling. In addition, the bishop surely has his own interest in maintaining the parochial school system that he manages. He may view governmental financial involvement as an important way to keep the system alive.

In each of the four cases mentioned, use of the phrase *right to education* constitutes self-involving language in that the self of the speaker is disclosed to the one spoken to. This sort of self-disclosure is not obviously present in our other three hypothetical cases—the Riverside, Indian Hills School Districts, and the Special Commission on Human Rights. One reason is that the self of the speaker is elusive because the speaker is, in each case, a bureaucratic organization rather than an identifiable individual. Neighborhood Legal Services, the state supreme court, and the special commission each speak with one voice, but we are reluctant to attribute a self to such organizations. This is especially true because we assume that such institutional bodies are concerned with an impersonal, abstract ideal of justice rather than with a personal, concrete response to specific needs and interests. Still, we can—and do—say analogously that the public pronouncements of Neighborhood Legal Services or the court or the commission express the personality or values of that organization at a given time. We must be careful to limit our observations to the self of the organization rather than to the selves of each of its members or the self of the spokesperson who actually makes the pronouncement. At the same time, we cannot allow ourselves to be mystified by the self of the organization, that is, to forget that the organization's response takes shape in response to the needs, interests, and values of its members who, in turn, respond to a particular set of circumstances. We will return to this point in the next section.

First, we must pay more attention to the sense in which self-involving language commits the speaker to further action and to the force of that commitment. We noted earlier that to acknowledge another's right to education is to acknowledge a prescription (should), which one then incorporates into one's own intentions (shall). What is that prescription? What should I do? How shall I do it?

Neighborhood Legal Services acknowledges the right to education of the students in the Riverside School District that, by definition, apparently implies integration and adequately funded schooling. Neighborhood Legal Services accepts a commitment to further action inherent in that acknowledgment. However, the "further action" is not to actually provide the remedy but to wage the battle to see that the remedy is provided by those empowered to do so.

The special commission acknowledges a general right to education and takes the further step of generating worldwide awareness of the plight of those who do not enjoy minimum educational benefits. The commission does not itself undertake to provide education, however.

The state supreme court acknowledges the right to education of the students in the Indian Hills District. The right, in this case, is directly related to the equal number of dollars spent per pupil throughout the state. The court takes the further action of directing the state to formulate a fair spending program, but it does not actually distribute funds.

Ms. Healey acknowledges Danny's right to education, equating the right with his placement in the least restrictive environment possible. Further, she lobbies on Danny's behalf with the special education committee. However, she does not plan to carry out a personal program to educate Danny.

Are these really instances of self-involving language? In acknowledging a right to education, does the speaker actually commit him- or herself to further action? In each case, the speaker commits to more talk, but is that really further action?

Is there a commitment involved in acknowledging another's right to education?

To the extent that more talk leads to political action on educational matters, the commitment to further action is concrete. The difficulty arises when there is no consensus on who (that is, which institution) is empowered to act when; for example, everybody agrees something ought to be done, but each thinks the other ought to do it. It is important to recall that education is a sociopolitical domain. It involves the distribution of benefits based on societal values. To commit oneself to further discussion of how and why educational benefits are to be distributed is to commit oneself to participate in the political process surrounding education.

To say that you have a right to education is not to say that I should and shall educate you, whatever that might mean under the circumstances. Rather, it does say that I should and shall participate in the ongoing discussion about just what the circumstances are, what societal values are reflected in the current distribution of educational benefits, and how that distribution should be altered to more closely reflect what we perceive to be the demands of justice.

If we speak of a right to education—our own or another's—we almost always speak in a manner that is self-involving. We reveal something of ourselves and/or we commit ourselves to some action on behalf of another. This is not to say that we are always, or even often, aware of this self-involvement. In fact, frequently one is not and does not wish to be consciously aware. One might prefer to convey the impression of dealing solely with objective facts rather than with subjective needs, interests, and values. This ties in with the observation ventured earlier that one of the ways in which talk of a right to education is used is to transform personal preferences into impersonal reasons. It is to the speaker's advantage to be able to speak of "what is right" independent of personal wants, especially where the two "happen to" coincide.

Yet a question remains. What is the element in one's experience that leads to talk of a right to education rather than to address the needs, interests, and values in educational affairs? Why would one acknowledge another's right to education rather than simply admit that "I should and I shall" act to satisfy the other's need, interest, or value? What does asserting that "Danny has a right to education" add to such expressions as "Danny needs ____" or "Danny has an interest in ____" or "Danny's sense of self-worth depends on ____"? Why does the statement "Students in parochial schools have a right to education" pack more argumentative punch than the statement "Students in parochial schools need financial relief to attend the schools of their choice"?

The distinctive feature present in talk about a right to education, which is not present in talk about needs and interests, is a move toward generality, toward abstraction, toward typification. Some might prefer to say universality, but that is more than I wish to imply. This move toward generality—toward making rules, toward formulating principles—warrants further discussion and will be considered in a subsequent section. For now, let us focus on the responsive character that expresses the experience of justice and education.

## The Responsive Element in Talk of a Right to Education

Use of the phrase *right to education* as part of the language of justice and education is responsive. By this I mean that it arises in response either to specific perimeters of one's experience—one's own need, interest, or sense of self—or to specific events in one's experience—another's request, action, or claim. However, it arises not only in response to isolated elements in one's experience but also—and at the same time—in response to the constants of the past. The constancies of the past encompass the everyday world into which one has been socialized and which itself has been socially constructed.[4]

In fact, one's own needs, interests, and sense of self are generated by one's perception of personal capabilities, possibilities, and responsibilities. The other's requests, actions, and claims take shape in the light of the capabilities, possibilities, and responsibilities that the world presents to him or her. These capabilities, possibilities, and responsibilities may be physical, societal, legal, or moral. The distinction is rarely clear and not really important here. What is important is that one understands oneself in the context of a social world and that one responds to oneself or another according to one's own perception of the demands of that world. As such, understanding an assertion of the right to education then becomes quite complex.

It is difficult to justify, for instance, analyzing a right to education solely in terms of the traditional correlativity thesis. The notion that if I have a right to education someone else has a duty to provide the education may contain a thread of truth, but surely it is not the whole truth. If someone else has a right to education, and I have or society has a duty to provide that education, it is because I, as a member of society, impose expectations that the other will contribute to society in some way and that the other person cannot contribute without the appropriate education. This interplay of capabilities, possibilities, and responsibilities is characteristic of the experience of justice and education.

At this point, it seems appropriate to consider the capabilities, possibilities, and responsibilities involved in each of our seven hypothetical examples. Particular attention must be directed to the question of whether each speaker would have used the phrase *right to education* if the capabilities, responsibilities, and possibilities involved had been different.

Ms. Healey's young student Danny has been determined to be educable mentally retarded. Danny has certain capabilities, limited though they may be. He is not severely retarded. He is capable of learning minimal skills that may allow him to make his way in the world with a small degree of independence. In fact, professional educators do not know with certainty the limits of Danny's abilities. As educational research sheds more light on learning disabilities, the possibility exists that we might expand Danny's abilities. So Ms. Healey argues for Danny's right to education. Would she do the same if Danny were severely mentally retarded, if he were incapable of rudimentary speech and personal hygiene? It does not seem likely. If she did speak of his right to education, it would not make much sense. We would be stymied as to how to respond. She might speak of his right to adequate care, but that is a different phrase and a different issue altogether.

The students who pass through the Riverside School District are expected to be productive, law-abiding citizens regardless of whether the education that they receive may be, in some way, inferior to that enjoyed by students in other school districts. This perceived expectation, coupled with the perceived deprivation of an inferior educational program, prompts the assertion of the Riverside students' right to education. Were there not an established public school system throughout the state with some districts of superior quality, there would be no perceived deprivation and no assertion of a right to education.

Mrs. Mason wants and needs either transportation for Becky to get to school or a school near her home so that Becky can walk. If Mrs. Mason were wealthy and had a chauffeur to transport Becky, it is unlikely that she would be concerned about her right to education. Similarly, if the school district had no truancy laws and allowed Becky to remain at home whenever it was inconvenient for her mother to take her to school, perhaps Becky's right to education would never have surfaced. However, the school district expects Becky to attend school faithfully except when ill, and Mrs. Mason is required to provide transportation even though some other parents do not. The combination of responsibility and lack of capability results in the assertion of a right to education.

We live in a world of rapid technological development where the worth of the individual person is, to varying degrees, tied to productivity. The Special Commission on Human Rights recognizes this and acknowledges a right to education. Were the information explosion not upon us or the status of people not determined by their schooling, then the commission's claim of a general right to education would seem far less meaningful.

At one time, the bishop of Pittsbury had no need to assert a right to education in order to win financial relief for parochial school students and their parents. In fact, there was no tuition and, therefore, no need for financial relief. Larger Sunday collections and the cheap labor of religious orders allowed parochial schools to open their doors without charge. If either or both of these conditions were to exist again, perhaps the need to assert a right to education would fall by the wayside. Similarly, if Pittsbury were located in a country that did not hold dear the separation of church and state, a country that freely allowed joint projects between governmental and religious institutions, then there is some doubt that there would be enough opposition to the tuition tax credit plan to require the assertion of a right to education. Two hundred years of a particular political order forms the backdrop for such an assertion.

The court's decision that the Indian Hills School District must receive funding roughly equivalent to that of other districts in the state is based on past legal precedent and the state constitution's provision that all receive a "thorough and efficient education." If the state constitution had no such provision (as, for instance, Mississippi did not until very recently), the court may have denied the right to education. The court would never have decided this particular issue had the state not been involved in educational issues previously and had the Indian Hills School Board not filed suit seeking legal remedies. Without this background, the court's assertion of a right to education would be unwarranted.

In response to a move toward requiring Amish youngsters to attend secondary school, Adam Everhart speaks of the Amish right to education and the freedom it implies. His assertion only makes sense because there is a move to alter the accommodation between the state board of education and the Amish. The Amish cannot send their young people to secondary schools without harming their economy—farming—and, in their minds at least, imperiling their religious faith. The state requires compulsory school attendance until the age of sixteen, allowing an exception only for Amish teenagers. A possible change in state policy elicits Everhart's assertion of a right to education.

In all of these examples, it is clear that altering the capabilities, responsibilities, and possibilities inherent in the concrete situation can render the assertion of a right to education less meaningful. In each of the examples discussed, very different capabilities, responsibilities, and possibilities come into play. The important factor is the interaction between the reality and the expectations that others impose. To alter either element in the equation obviously alters the appropriate and meaningful response.

The point is that the assertion of a right to education is not a time-independent truth but a timely response. It is a response to the perceived push and pull of circumstances. If we are to understand the meaning of the phrase in any context, we must take note of the specific capabilities, responsibilities, and possibilities to which the speaker is responding.

## Right to Education as a Rule

Earlier, I observed that talk of a right to education contributes toward a mood of generality. Separate responses to educational contexts where justice is at stake tend to be generalized into rules of behavior couched in terms of peoples' rights, abstracted from the relational contexts that gave them life. There is nothing sinister in this. Rules of thumb or typifications have pragmatic value in helping us to get about in the world. A certain difficulty may arise, however, when rules of thumb are imbued with such compelling force beyond the manner and context of their origin that they are taken to be self-evident principles, or objective facts, applicable in any context.[5]

The phrase *right to education* emerges as a rule of thumb, distilled from past concrete experiences of justice and education and only later attributed toward individuals and applied abstractly to moral dilemmas. This phenomenon is called *reification.*

There is an additional observation about the right to education as a rule that may help to reinstate the importance of its context. Having rules only makes sense in the context of a game in which one participates. That game may be narrowly construed (basketball, Monopoly), broadly based (the "Game of Life"), or somewhere in between ("The United States Game" or even "The Legal Game"). A group of people may properly be said to be playing (the same) game only if they share common goals or objectives. Games may be competitive (score more baskets than your opponent) or cooperative (create a society in which all persons enjoy rewarding lives), but there must be common ends in mind. Because there are common ends, there must and will be agreement to play by the rules.

We tend to think that rules must treat all participants the same and, that once ordained, rules remain intact. In fact, rules are wonderfully flexible and are subject to exceptions, since their purpose is to allow the game to be played.

Advantages for certain participants can be an integral part of the game. For example, handicaps allow the mediocre golfer to compete realistically with the scratch golfer in medal play. The three-point basket beyond nineteen feet gives some advantage to the shorter basketball player, counterbalancing the built-in advantage of the seven-footer.

At the same time, rules can be temporarily dropped during a game. Participants, for example, may agree to suspend a particular rule. Hearing-impaired football players use rhythmic motion on the offensive line to indicate the count before snapping the football. The rule prohibiting movement on the offensive line is suspended in these games, though it remains a part of the rules of football. Many rules have exceptions. The more general the rule, the more exceptions it is likely to have. In golf, a player must hit the ball where it lies—unless, of course, it lands on the cart path. Then the player is awarded a free drop.

Since rules are not inviolate, and the right to education may be taken as a rule, it too is not inviolate. Rules may be suspended in certain circumstances or they may contain or remove advantages for certain participants. Above all, rules are only important and meaningful in light of the common goals of the game.

The implicit form of a rule is, "If ____ , then ____ ." If one wishes to determine which team has greater skill in shooting a basketball through a hoop, then score two points for each basket made. The then clause, the part we tend to think of as the actual rule, is only compelling if one accepts the if clause.

It makes sense to think about the assertion of a right to education as a rule of action offered in each of our hypothetical situations despite the fact that the prescribed action is actually different in each situation. The speaker wants to offer a basis for his or her preferred course of action that is independent of the contingent circumstances and thus invokes the form of a general rule. The specific content of the rule is derived from particular responses to situations of justice and education, and not surprisingly, coincides with the preferred course of action. Some examples will demonstrate the if-then nature of the right to education as well as point out how exceptions, suspensions, and advantages come into play.

The Riverside, Indian Hills, and special commission examples share the common feature of dealing with advantages, though whether there is the perception of a rule containing or removing advantages may depend on one's point of view. The prescribed action in the Riverside case is control of racial and economic inequalities. In the Indian Hills case, the rule mandates that state funds should compensate for financial differences among local school districts. The special commission prescribes the education of all rather than of a few.

Each of these prescribed actions is preceded by an implicit clause stating the goal or the value served by the rule. If we want equal educational opportunity, then we must control racial and economic inequalities. If the state constitution promises a "thorough and efficient education for all," then state funds should compensate for financial differences among school districts. If we want involved and productive citizens of the world, then we must educate all rather than a few.

These goals, despite having a nice ring to them, are debatable and multifaceted. *Equal educational opportunity* is itself a phrase that means everything and nothing at all. The state constitution's promise of a thorough and efficient education seems binding but does not mention a possible conflict with the long-standing and quite strong tradition of local control in education. While no one would profess to prefer unproductive citizens, the meaning of productivity and the link between individual productivity and various economic systems remains a speculative topic.

It is apparent that revealing the goals of the game may open up new areas of debate. The debate centers around what one hopes to accomplish as well as what one ought to do. It is a debate of justice. If, for example, we achieve equal educational opportunity defined in such and such a way, will justice be served? And if so, what must we do to achieve it?

The use of the phrase *right to education* is a shorthand formulation encompassing all of this: implicit goals, prescribed action, and a sense of the game that we all play. Perhaps the most broadly based game is "Individuals Getting Ahead." While most of us accept the long-range goals of the game—to see who gets ahead—we disagree as to how and where it should start. Some feel that the individuals' varied starting positions assigned by fate (poverty, ill-health, uneducated parents) should not be altered. They view compensatory education as unfair. On the other hand, some feel that everyone should start at roughly the same point or at least as close to economic and cultural parity as can be achieved. They view compensatory education as the only way to achieve fairness. In either case, a right to education is a rule, a prescribed action based on an implied goal that controls the advantages of the players in a game like "Getting Ahead."

We noted earlier that rules can be suspended by mutual consent and still remain rules of the game. The cases of Mrs. Mason and the bishop of Pittsbury involve the suspension of rules.

Mrs. Mason argues that the school board must treat all the students in the same manner with regard to neighborhood schools and transportation. Either all elementary students should be able to walk to school or all should be transported. If all are to be treated fairly, then all must be treated in the same manner.

While it is far from settled that fair treatment is equivalent to identical treatment, let us accept this rule at face value. To implement the rule, however, requires that certain other rules be suspended. Rules about limiting expenditures and maximizing efficiency would have to be dropped in order to keep neighborhood schools open for all students and in order to transport all students. It is not that these rules no longer exist. They are still part of the education game. However, it is Mrs. Mason's contention that the game cannot be played if these rules are rigidly enforced, because some students would not be able to attend school.

From the bishop's perspective, attendance at parochial and other "alternative" schools must be made more economically feasible. This prescription applies if we truly want to educate the whole person, including his or her religious dimension. To abide by this rule, as the bishop recommends, would require the suspension of another long-standing rule—the separation of church and state. The bishop does not challenge its existence or its significance. He simply seeks its temporary suspension. If the rule were strictly enforced in this instance, the game of education could not be played. We would be sacrificing important elements of the development of persons to a rule that was intended to govern other situations.

There are often exceptions to a rule; Danny's situation is such an exception, as is the case of the Amish.

Ms. Healey suggests that if we want the populace to be able to live independently, then we must provide the kind of education that develops independence. Perhaps what we really need to do is teach the populace to live interdependently. Once again, the goal implied by the prescribed action is open to discussion.

Even if we were to accept Ms. Healey's rule, we would be forced to admit that there are exceptions to the rule. For a human being who is clearly incapable of living independently due to mental, physical, or emotional handicaps, education for independent living is meaningless. The severely mentally retarded child, for example, apparently constitutes an exception to the rule that Ms. Healey invokes.

For Representative Everhart, the Amish are an exception to a rule of action that might be implied by the phrase *right to* *education*. The right to education mandates the provision of educational programs so that our young people may become good citizens. However, in Everhart's eyes at least, it does not preclude the possibility that some segments of the population may provide their own program to reach this end. In incorporating their young people into their own farming economy and religious culture, the Amish are doing just that. As a result, Amish youngsters are an exception to the rule calling for participation in public education programs.

Most of the examples discussed here involve rule requirements. Everhart, without denying the commonly accepted substance of the right to education rule, directs attention to when and to whom the rule applies. It does not apply to a situation where it is unnecessary or meaningless, as in the case of the Amish.

The above is not intended as proof that the right to education is a rule. It is intended more as a descriptive discussion showing that separate responses to specific situations where justice is at issue tend to be accepted as if they were general rules of behavior. The specificity of the response is lost in the generality of the rule. Such a general rule has significant pull because of the process of reification that the phrase undergoes. When doing moral analyses, we end up analyzing phrases rather than analyzing how the persons involved perceive the situation and rather than asking what the just response might be in that situation.

## Notes

1 This notion of typification refers to that phenomenon described by Alfred Schutz by which the experiential world is apprehended from the outset in typical form. See especially "Common-sense and Scientific Interpretation of Human Action," in *Collected Papers*, vol. 1, ed. Maurice Natanson (The Hague: Martinus Nijhoff, 1962), pp. 3–47.

2 There may well be other phrases that constitute typified expressions or slogans. *Equal educational opportunity* is an obvious example that could be subjected to the same kind of contextual analysis being done here.

3 This is a notion borrowed from linguistic philosophy, though it may have a slightly different meaning here since it applies not only to what one says but also to how one says it. See D. D. Evans, *The Logic of Self-Involvement* (New York: Herder and Herder, 1969).

4 For a discussion of the social construction of our everyday world, see Berger and Luckmann, *The Social Construction of Reality.*

5 In *Wittengenstein and Justice*, Hannah Pitkin discusses Wittgenstein's observation that an ability to, and need to, generalize is an essential feature of the human mind (pp. 89–90).

# 7

# Individual Integrity in Context

A young man named Danny is about to have his educational future decided by his school's special education committee. Danny is mildly retarded but capable of some as yet undetermined degree of independent activity. The members of the committee are leaning toward placing Danny in a tutorial situation, separated from his peers and the lessons about living in the world that he would learn by interacting with them. One committee member, Ms. Healey, argues that their imminent decision is incorrect because "Danny has a right to education just like anyone else!" What is it that prompts Ms. Healey to speak of Danny's right to education rather than to simply say, "You shouldn't do this because ___" or "This isn't fair because ___"?

School officials routinely make decisions that are subject to disagreement. Imagine that the school board decided to convert the math curriculum from standard math to yet another brand of new math. Now let us suppose Ms. Healey felt that this decision was incorrect and that she spoke at a board meeting on the subject. Would she invoke the right to education as part of her argument? Perhaps, but it seems less likely. Ms. Healey might say, "The program you propose does not meet the needs of all of our students." She might say, "This plan will not adequately prepare our students for life in the real world." However, it is doubtful that she would immediately interpret the situation as one in which a person's or group's right to education was at stake.

What is the difference between these two situations that makes assertion of a right to education more appropriate in one but not in the other? Why does the decision regarding Danny lend itself to talk of his right to education while the decision to implement a new math curriculum for all students is less likely to generate such an assertion?

We should first cite the similarities between the two cases. In both situations, school officials are making decisions that control, to a greater or lesser extent, the lives and learning of students. These are sociopolitical decisions. Both sets of circumstances involve the offer of one plan of education in place of another. Neither, however, involves a total deprivation of education.

Further, one must take a consistent position. What is at stake is educational policy or theory, not justice. On the other hand, one might argue in both instances, that educational policymaking is, by its very nature, an activity in which justice is at stake. Whichever position one takes, consistency would require that one take that position in both situations. One cannot say that justice is at stake for Danny and so his right to education is a factor, whereas justice is not at stake for the mass of students and so no assertion of a right to education is appropriate. Both situations may be interpreted as issues of justice. However, the mere presence of a question of justice is not sufficient to warrant the use of the phrase *right to education.* What more is needed to justify its assertion?

The answer is as simple, and as complex, as the difference between Danny and the "mass of students." Danny is an individual, one small segment of the "mass of students." If Danny is not provided with an appropriate education, he loses not only a particular educational benefit, but he also loses the opportunity of being a person who counts, who makes a difference. If the "mass of students" are not provided with an appropriate (math) education, they lose some educational benefits but they do not sacrifice any individual integrity vis à vis the collective. The decision to provide one kind of math curriculum for all does not, by definition, place any individual or group (that is, any small segment of the "mass of students") at a disadvantage with respect to the whole group.

Individual integrity threatened is at the root of the experience that prompts the assertion of a right to education. Under individual integrity, I include the sense of one's self justified in claiming a benefit or an identity whether that justification arises from being an individual member of society or from being a member of a subgroup within society. The bulk of this chapter will explore the other hypothetical examples of the use of the phrase *right to education* to see if this element of individual integrity threatened figures in the circumstances of each and may, therefore, be accepted as a typified feature of the experience that generates talk of a right to education. Before doing so, however, I would like to discuss, in somewhat general terms, the relation between the individual and society, the role of individual rights in such a relationship, and the thoughts of theorists who have noted the link between talk of rights and a sense of individual integrity.

## Some Background on Individual Integrity

In order for a person to perceive that his or her integrity as an individual is threatened by someone else, a person must first have a sense of him- or herself, a sense of the "I" whose integrity can be threatened. The notion of individual integrity, by itself, has no meaning outside of a context in which individuals are thought to have primary importance.

This sense of "I," often described generically as individualism, is acknowledged to be a key characteristic of the predominant worldview in contemporary Western society. Adda Bozeman calls this concept of individualism one of the "primary structuring ideas," one of the "sustaining conceptions" of Western civilization. Says Bozeman:

> Foremost among these sustaining conceptions is a strong commitment to the idea of civilization. . . . This concern . . . is the source of the West's major norms of organizing society. And among these norms, none have exercized the Occidental imagination as consistently as those summarily described as "law." The efforts registered under this heading in civil law and common law countries are greatly various but they have converged on the following tasks: to identify the essence of law in counterpoint to other norm-engendering schemes such as nature, ethics, and philosophy; to cast human associations, including that of the state, in reliable legal moulds; and *to emancipate the individual from the group by defining his rights and obligations* not only as an autonomous person but also as a citizen of his state.[1]

An overriding concern for individuation, combined with an emphasis on law as crucial to the organization of society, forms the context for the definition of rights and obligations. These rights and obligations are believed to emancipate the individual from the group. Daniel Maguire notes the link between talk of rights and the "liberation of the individual." According to Maguire, "The liberation of the individual from submersion in the collectivity is a distinguished modern achievement and the language of rights served it well."[2] The liberation of the individual is far too complex and important a topic to be told here. Complicated scientific, religious, and economic currents in Western history contributed in various ways to the emergence of the individualistic component of our worldview. We need only note that talk of individual rights finds especially fertile ground in a worldview marked by individualism and an emphasis on law and legal modes of social organization.

The notion that the individual must be liberated from society indicates that the individual is set in opposition to the society in which he or she lives. Without status as an individual, he or she is in danger of being swallowed up by society. The needs and interests of the individual may be ignored in favor of the needs and interests of the collective.

From the beginning, the terminology of rights has been used to prevent just such an eventuality. Says Adda Bozeman about colonial American codes of law, "The store of textual sources is rich in bills of rights . . . each carefully drafted with a view to creating the kind of social and political order that would assure freedom and security for the new communities and *their individual inhabitants.*"[3] The early colonists knew firsthand the experience of individual integrity threatened and took pains to couch their social rules in the form of individual rights. Without such rights, the individual would be at a hopeless disadvantage in any attempt to challenge the actions of government.

That there is this adversarial element in the assertion of individual rights is also noted by Maguire. If one does not feel disadvantaged or threatened, there is no need to assert rights. Says Maguire, somewhat paradoxically, "Rights talk arises in the face of a denial of rights."[4]

I do not mean to imply that individualism and a sense of opposition between the individual and society either is or should be the natural order of things and the key to justice. What the preceding discussion does is expose some of the ideological baggage that the term *right* embodies.

The ideology of individualism is present in our accumulated understanding of the term *education* as well as in our understanding of the term *right*. In 1938, the Education Policies Commission of the National Education Association issued a statement that read, in part:

> There can be no such thing as the welfare of "the State" at the expense of, or in contrast with, the general welfare of the individuals who compose it. Man is not made for institutions . . . institutions are made by and for mankind. The general end of education in America at the present time is the fullest development of the individual within the framework of our present industrialized, democratic society.[5]

For the National Education Association, society is the sum of the individuals who make up its parts. The sum of the development of every individual, therefore, is the development of society. Thus a prior sense of individual integrity can be threatened in the educational arena.

The dominant worldview from which talk of a right to education has developed is the context of its use. It is particularly relevant to the present discussion. At least two theorists have already noted the link between talk of individual rights and a sense of individual integrity. One, Joel Feinberg, is an analytic philosopher. The other, the aforementioned Daniel Maguire, is a humanistic ethicist.

Maguire looks initially at what justice might be and then shifts to how talk of rights functions within his understanding of justice. Justice, for Maguire, is the "elementary manifestation of the other-regarding character of moral and political existence."[6] It is willingness to take others seriously. Maguire maintains that we owe it to others to take them seriously because they (each) have worth. We show what we think others are worth by what we concede is due them. The minimum due to any person is set according to his or her essential needs. The determination of essential needs is and must be contextual, but the principle underlying needs, rights, and justice remains constant, according to Maguire: "Basic needs issue into rights when their neglect would effectively deny the human worth of the needy."[7] If we deny persons justice by denying their rights, "we declare them worthless."[8]

Feinberg views the link between individual rights and individual integrity from a somewhat different perspective. He begins with a description of an imaginary world in which no one has rights, although he allows that world to be "morally pretty" in other respects—that is, people are "good" to one another. He then goes on to analyze what "a world is missing when it does not contain rights and why that absence is morally important."[9] His analysis revolves around the activity of claiming. He says, "Having rights, of course, makes claiming possible; but it is claiming that gives rights their special moral significance,"[10] because feeling justified in claiming something for oneself is linked to a minimal level of self-respect.

Indeed, says Feinberg:

> Respect for persons . . . may simply be respect for their rights, so that there cannot be one without the other; and what is called "human dignity" may simply be the recognizable capacity to assert claims. To respect a person, then, or to think of him as possessed of human dignity, simply is to think of him as a potential maker of claims.[11]

Conversely, to claim something on one's own behalf requires self-respect and a sense of dignity.

I do not wish here to defend the positions of either Maguire or Feinberg. I merely want to acknowledge the source of my observation that individual integrity is linked to talk of individual rights. Nor, of course, do I wish to speak of all individual rights, as do Maguire and Feinberg. I only want to apply the notion of individual integrity to the use of one particular phrase: *right to education*.

It takes more than individual integrity to prompt the assertion of a right to education, of course. It takes a sense that individual integrity is threatened in an identifiable educational context. A consideration of specific examples of the use of the phrase will support these observations.

## Cases and Comments

What type of experience prompts a person to speak of his or her own or another's right to education? The answer, tentatively proposed, is that the person experiences some state of affairs in which the integrity of an individual, him- or herself or another, *as* an individual is perceived to be threatened by some powerful other.

Two points accompany this tentative answer. First, to speak of individual integrity threatened is not to limit ourselves to cases of one's own individual integrity such as "I have a right to education." It is not unusual for one person to believe that another person is being taken advantage of, especially when the relationship between the two is paternalistic. As has already been noted, assertions of a right to education are most often expressed in the third person by someone on behalf of another (usually younger and/or less powerful).

Second, we are concerned with how the speaker who asserts the right to education experiences the situation that gives rise to the use of the phrase. We have, in a preceding chapter, described the type of situation in which the assertion of a right to education is appropriate as social, political, public-rational, and educational. This, however, was from an external perspective. The question now requires an internal outlook. It may be accurate to say that a situation is social, political, public-rational, and educational without the speaker being actually aware of it. That does not concern us. What does concern us is the speaker who is cognizant of the context of the situation.

What constitutes a perceptible threat to individual integrity? An initial answer might be any need or desire felt by or for the individual that is left unfulfilled. However, this broad formulation seems implausible for it includes needs or desires that are outlandish, whimsical, and/or contradictory. A girl's desire to be a world-class sprinter or a fashion model, a boy's aspiration to be a seven-foot-tall basketball player or a movie star, or a person's wish to win a million dollars in the lottery are scarcely the stuff of threats to individual integrity. Threats to individual integrity must be linked to reasonable expectations and reasonable expectations are only determinable in the context of societal values, goals, and promises.

For purposes of analysis, we can identify three types of situations that yield reasonable expectations as a perceptible threat to individual integrity. The first includes situations of clear harm, that is, situations in which widely accepted minimum standards of need are violated. The second includes situations of inequality or unfair treatment, that is, situations in which some beneficial treatment is accorded to some and not to others. The third includes broken bargain situations, that is, situations in which expectations of beneficial treatment—based on a promise, an implicit contract, or an understood common goal—remain unfulfilled. Each of our examples of usage of the phrase *right to education* fall into one (or more) of these categories.

The special commission's plea for a right to education for all illustrates the threat to individual integrity that accompanies the perception of clear harm. The commission recognizes that it requires a minimum level of education to be effective in today's world.

Those people who do not enjoy a minimum level of education are diminished as individuals. They may lack a means of support and a means of communication. They often lack economic and political status. In institutional terms, they are individually powerless, lacking identity and autonomy as well as material benefits.

Without education, these individuals cease to exist in any institutionally visible or effective way. This is a clear threat to their individual integrity. The phrase *right to education* arises to combat that threat. The special commission, composed of those who know the power of education firsthand but who themselves lack the economic and political reach to provide such education, issues a call to the powerful on behalf of the powerless.

Let us imagine for a moment that our hypothesis is incorrect, that a sense of individual integrity threatened is not the type of experience that prompts the assertion of a right to education. What are the alternatives?

First, we might suppose that the commission's assertion of a right to education arose due to an affection for humanity or a sympathetic feeling for the undereducated. While quite possible and even likely that such emotional considerations are involved, this suggestion is simply too unfocused to explain a claim of a right to education. There is no clue as to why the commission would speak of such a right rather than simply state what the undereducated may need or even what they "ought to have," based on an emotional portrayal of their plight. Further, we are constrained by our earlier observation that contexts for the appropriate use of the phrase are public-rational ones, situations in which rational considerations are thought to outweigh emotional ones. Therefore, the extent to which emotional responses to another's educational deprivation contribute to the assertion of a right to education is shaped by perceived public-rational concerns.

Second, we might take the opposite position and suppose that what prompts the commission's assertion of a right to education is an objective intention to follow some *a priori* rules or rational standards for the treatment of the undereducated. The commission states the right to education as a rule of thumb. Unfortunately, this suggestion explains nothing and opens up a host of questions. Why does the commission turn to rules in this situation? What are the rules? Where do they come from? Why are the rules more important than emotional considerations?

Third, we could suppose that the commissions's assertion of a right to education is prompted not by a sense of individual integrity threatened but by a sense of overall societal goals or values threatened. But if this is the case, it seems odd that the commission would speak in terms of an individual right to education rather than address what the common good requires or what the welfare of society demands. The commission's use of the phrase might make sense if we assume that societal goals are reducible to, and best expressed in terms of, individual rights. However, that sort of individualistic assumption brings us back to individual integrity as the critical factor and focuses on a threat to individual integrity as prompting the assertion of a right to education.

More examples provide additional support for our hypothesis. The cases of the Riverside School District and of Becky Mason involve reasonable expectations arising out of situations in which a beneficial treatment is accorded, directly or indirectly, to some and not to others.

Riverside is a consolidated school district, born of the merger of three small community school systems. In that sense, it is much like the school districts that surround it. However, the main difference is that Riverside is comprised of communities that are poor and getting poorer, enveloped by communities that are more affluent and have a more stable economic base.

Due to the tradition of local control and local funding for school districts in the state, Riverside must rely heavily on its own economic circumstances to finance education. The consequence of this situation is that fewer dollars per pupil are available for the education of students in the Riverside district than students in surrounding districts. Further, the economic situation in Riverside is slipping, so prospects for the future indicate a wider disparity of educational benefits. There is a perception that Riverside is being left behind as other school districts prosper. Students in Riverside are disadvantaged compared to students in other, wealthier districts. Their integrity as educable individuals is seriously threatened.

This would not be the case—that is, there would be no threat to the individual integrity of the Riverside students—were the economic plight to the Riverside area a common problem. If, for instance, all school districts were finding it hard to meet the financial obligations of educating their students because of a widespread recession, then the Riverside district would still have a problem, but not one perceived as a threat to the integrity of a particular group of individuals. It would be a common problem affecting all students in all districts. While there may well be a legitimate need for more funding for the Riverside district (and all other districts as well), there is no reasonable expectation that the funding is forthcoming. Those addressing this problem would most likely speak of the importance of adequate funding for education, but probably not about the right to education of the Riverside students. The assertion of a right to education is stirred by the sense that one individual (or group of individuals) is losing ground compared to the mass of individuals because of an unequal distribution of a benefit.

Such is the case of Becky Mason. Becky's neighborhood school will be closed, and Becky will have to find her own transportation to the elementary school on the other side of the school district. Becky is not alone, of course. Many students will be disadvantaged by the closing of the neighborhood school. The experience for each of them is the same. Each is aware that he or she will be deprived of a benefit (walking to a neighborhood school) that many others enjoy. Each perceives no reason why he or she is deprived and others are not. Each has a sense that his or her importance as an individual is diminished. To assert a right to education is to reassert each person's individual integrity.

The school board's perspective is, of course, somewhat different. The board makes what it considers to be the best decision, that is, the decision that harms the fewest students but still makes economic sense for the district as a whole. Still, from the perspective of disadvantaged individuals, there is a sense that the board's consideration of the big picture does not adequately capture the plight of those individuals hurt by the decision. Individuals, by and large, are not nearly as aware of what is in the best interests of the districts as a whole as they are of their own (short-term) interests. An assertion of a right to education in these circumstances is a statement of the individual's interests and a plea to take these individual interests seriously.

No such statement of individual interests would be particularly appropriate or effective if all were in the same situation. If, for instance, the school board decided to cut costs, not by closing a building, but by increasing class size, each student would be equally disadvantaged by the move. A higher pupil-teacher ratio may be a legitimate cause for protest, but the protest would probably come in terms of the best educational policy rather than in terms of an individual's right to education. Without a threat to individual integrity, without a sense that an individual is unreasonably disadvantaged with respect to the mass of individuals, the phrase does not exist.

Two of the three remaining examples—the Indian Hills School District and Representative Everhart and the Amish—involve reasonable expectations arising out of the perception of a broken bargain. The bargain or contract may be explicit (based on an overt promise to do or provide something) or implicit (based on a thought-to-be-understood common goal or common activity). The sense that the bargain is broken constitutes a threat to the individual integrity of the one disadvantaged by the break. This is so not only because of the possible loss of a benefit, but also because the disadvantaged individual loses the sense of identity and self-respect generated when others honor the contracts they have made with that individual.

The Indian Hills case is a straightforward example of an explicit bargain to provide an educational benefit. The state constitution mandates a "thorough and efficient education" for all. This mandate creates, from the perspective of the Indian Hills board, the reasonable expectation that adequate state monies will be available to provide such an education. In failing to ensure the provision of funds roughly equal to the amounts available in other districts, the state has broken its bargain with the students of Indian Hills. This broken bargain is perceived as a threat to the integrity of those individuals who comprise the Indian Hills School District. There is a sense of deprivation as well as the challenge to self-respect that accompanies the experience of being slighted. The Indian Hills School Board fights back through a lawsuit that asserts the right to education on behalf of the Indian Hills students.

In the absence of the state constitutional mandate, there would be no explicit bargain, no reasonable expectation that the state provide education for all, and no threat to the integrity of those individuals for whom education is not provided. There would be no experience to prompt the assertion of a right to education.

The bargain between the Amish and state education officials is both explicit and implicit. It was explicitly agreed that Amish children would attend school until the eighth grade. The state would cooperate with the Amish in accepting some form of at-home, postelementary educational program until the Amish youngster reached the age of sixteen. The implicit part of the agreement was that the Amish would educate and monitor their own young people to ensure that they be good and productive citizens. In their own eyes, the Amish feel threatened and betrayed since they have kept their side of the bargain. Further, a change in state policy would, from their perspective, threaten the uniqueness of the Amish people. Their concern is not a lost benefit but a lost identity. This threat to the individual integrity of the Amish prompts Representative Everhart to speak for their right to education and their prerogative to refuse its benefits.

Compulsory school attendance does not constitute the same kind of threat to individual integrity for members of mainline Protestant denominations. This is true, in part, because members of the mainline Protestant churches have been supportive of and involved in public education since this country's inception. We might even offer the general observation that public schools have developed in response to the educational needs and values of the Protestant majority. As a result, there is no sense of deprivation or threatened identity involved for those mainline Protestant youngsters compelled to attend school through the age of sixteen. There is no experience that would prompt the assertion of a right to education and a defense of the individual choice inherent in such a right.

The final case, that of the Roman Catholic bishop of Pittsbury, is more difficult to categorize. Nonetheless, we can see how this exemplifies a perceptible threat to individual integrity if we keep in mind that the emphasis here is on the experience of the one using the phrase *right to education*. Whether there is a threat *in fact* is not the determining factor. A person asserts a right to education when he or she *believes* that such a threat exists.

The bishop apparently believes that a lack of public financial support in the form of tuition tax credits constitutes a threat both to the Catholic identity and to the integrity of Catholics as a constituency that is significant when decisions of public interest are considered. It is not immediately clear what is the basis of the bishop's expectation that financial support ought to be forthcoming.

This does not appear to be a case of clear harm. Nor is it obviously a case of unequal treatment, since no other religious group is given public financial aid for its activities, educational or otherwise. It is possible that the bishop views this as a broken bargain situation. The combination of the common national values of education for all and religious freedom generate an implicit agreement that religious groups will pursue education for their members, and that the state will assist them in that pursuit by making freedom of choice practically as well as theoretically feasible.

Still, there is another way to interpret the element of individual integrity threatened in the bishop's assertion. In a political climate where interest groups lobby for the good of their members, and special interests are quite often accorded special treatment, the bishop perceives that his interest group, Roman Catholics, is losing ground as an effective political entity. This constitutes, in his eyes, a threat to the integrity of his members. It is a matter of expectations arising out of what is perceived to be unequal treatment. The feeling is that others are getting some form of special treatment; Catholics should too. The baseline is determined not according to the treatment of other religious groups but according to the treatment of special interest groups. The bishop's assertion of a right to education in support of tuition tax credits arises in response to that experience.

## Summary

Early in this chapter, we posed the question: What type of experience prompts a person to speak of his or her own or another's right to education? We offered the tentative response that a perception of one's own or another's individual integrity threatened in an identifiable educational context is necessary. We observed that individual integrity—that is, a sense of being a person who makes a difference and whom others must take seriously—is threatened when individual needs are confirmed and supported by reasonable expectations, yet remain unfulfilled. We further observed that there are three types of situations that yield the reasonable expectations necessary for a perceptible threat to individual integrity: (1) clear harm, (2) inequality or unfair treatment, and (3) a broken bargain. We have explored cases of usage of the phrase *right to education* that exemplify each of these three types of a perceived threat to individual integrity. By and large, the examples confirm the hypothesis that, at the root of each assertion of a right to education, is the sense that someone's individual integrity is being threatened in an identifiable educational context.

## Notes

[1] Adda Bozeman, "The Roots of the American Commitment to the Rights of Man," pp. 51–52 (emphasis mine).

[2] Maguire, *New Justice*, p. 73.

[3] Bozeman, "Roots," p. 73 (emphasis mine).

[4] Maguire, *New Justice*, p. 72.

[5] Educational Policies Commission, *The Purposes of Education in American Democracy* (Washington, D.C.: National Educational Association, 1938), p. 17.

[6] Maguire, *New Justice*, p. 58.

[7] Ibid., p. 65.

[8] Ibid., p. 58.

[9] Joel Feinberg, "The Nature and Value of Rights," in *Rights*, ed. David Lyons (Belmont, Calif.: Wadsworth Publishing Co., 1979), p. 84.

[10] Ibid., p. 87.

[11] Ibid.

## 8

# Meaning in Perspective

In the preceding discussion, the notion of the speaker's perspective appears with some frequency. The perspective of Mrs. Mason on the school closing issue differs from that of the school board. The Amish point of view of public school attendance departs radically from the point of view held by mainline Protestants. The perspective of the bishop of Pittsbury is quite different from that of his city's school board president. While not crucial, perspective is yet another important factor in determining the meaning of the phrase *right to education*. It is, in fact, the last important factor to be discussed here.

*Perspective* is a term familiar to those well-versed in the political and public-rational arena. Hannah Arendt suggests that the public realm is characterized by the simultaneous presence of innumerable perspectives.[1] All participants gather at a common meeting ground but maintain different locations within it.

Like Arendt, Hannah Pitkin maintains political discourse is discourse that is addressed to many different types of people and that relates their plural interests to a common interest or enterprise, to some sense of "we." Says Pitkin, "What characterizes political life is precisely the problem of continually *creating* unity, a public, in a context of diversity, rival claims, unequal power, and conflicting interests."[2] Without conflicting interests, there simply is no political issue. The challenge is to resolve the conflict and, at the same time, to preserve the sense of "we." It is not only a question of whether one's interest or another person's interest best serves or fits the (already settled) public interest. What is in the public interest is actually part of the debate. Similarly, a question of justice involves determining not only whether this action or that action best fits the (already ascertained) standards of justice. What justice demands is also actually part of the debate. It is important to remember that political discourse is a language of debate. That debate has as its end not necessarily winning or losing, but resolution, and is conducted from the diverse perspectives of participants.

It is these diverse perspectives that prompt participants to assert rival claims to a right to education and are integrally related to the circumstances of unequal power and conflicting interests in which they live their lives. If we seek to understand those who use the phrase *right to education* in political discourse—that is, if we seek to interpret their meaning—we must analyze their conditions. We must examine the interests and conditions of power that characterize the speaker's point of view.

This insight—that meaning and perspective are intertwined—is seminally expressed in the work of Karl Mannheim.[3] Taking a cue from Mannheim, this chapter centers around how the speaker's perspective limits and/or alters the meaning of the phrase *right to education.* As has been the procedure throughout the book, the bulk of this chapter will explore the seven hypothetical examples of the appropriate use of the phrase in order to illustrate the ways in which certain social conditions focus the attention of the speaker. This focus, in turn, determines the meaning expressed by the use of the phrase.

First, we need to consider some specifics regarding Mannheim and his notion of perspective as it relates to meaning. Mannheim's work in *Ideology and Utopia* focuses on the relationship between various social situations and systems of thought in an effort to unveil the social bases of the knowledge generated by such systems. What constitutes knowledge for the individual emerges from the concrete conditions and requirements of group life and is legitimized within the process of group living.

In *Ideology and Utopia,* Mannheim criticizes individualistic views of how knowledge is generated and suggests a relational alternative:

> In actuality it is far from correct to assume that an individual of more or less fixed absolute capacities confronts the world, and in striving for the truth constructs a world-view out of the data of his experience. Nor can we believe that he then compares his world-view with that of other individuals who have gained theirs in a similarly independent fashion, and in a sort of discussion the true world-view is brought to light and accepted by the others. In contrast to this, it is much more correct to say that knowledge is from the very beginning a cooperative process of group life, in which unfolds his knowledge within the framework of a common fate, a common activity, and the overcoming of common difficulties (in which, however, each has a different share).[4]

It is the process of active participation in all kinds of activities that generate human interest, purpose, point of view, value, meaning, and intelligibility. However, this process also gives rise to perspective bias. One has one's own (or the group's) interests, purposes, point of view, and values—all of these are limited. In turn, they impose other limitations on meaning and intelligibility.

Every perception, every thought, every judgment, according to Mannheim, has a particular perspective. It is accurate or factual or true only in relation to the bounds of that perspective. This "does not signify that there are no criteria of rightness or of wrongness in a discussion. It does insist, however, that it lies in the nature of certain assertions that they cannot be formulated absolutely but only in terms of the perspective of a given situation."[5]

Mannheim's point in making these observations is not to condemn those perceptions, thoughts, or judgments that stem from a particular perspective. He carefully distinguishes his position from the Marxist position that one's interests impede one from grasping the truth of a situation.[6] Rather, he argues that no perception, thought, or judgment takes shape independent of a particular perspective. To interpret the meaning of any perception, thought, or judgment requires an awareness of the perspective of the one who perceived, thought, or judged.

Broadly speaking, Mannheim uses the term *perspective* to be roughly equivalent to ideology, that is, the subject's whole mode of conceiving things as determined by his or her historical and social setting.[7] More narrowly, Mannheim uses the term *perspective* to signify the manner in which one views an object, one's perception and one's interpretation.[8] In both cases, Mannheim may be summarized thus: "The social position of the observer affects his outlook."[9] What one sees in a given situation depends upon one's social position. What one means in a given situation depends upon what one sees. What one says is linked to what one means.

In this view, it is possible for two people to say the same thing, to use the same word and to mean something quite different. Says Mannheim, "The same word . . . means very different things when used by differently situated persons."[10]

It is to this possibility that we now direct our attention. We shall look primarily at examples in which two differently situated parties both respond to a set of circumstances with the phrase *right to education,* but each intends a clearly different meaning. We shall also pay some attention to the perspective or social conditions common to all who use the phrase. Let us attend to the latter first.

## Common Conditions

Those who use the phrase *right to education* are, by and large, children of the Western world and of a Western worldview, powerless with regard to the particular problem that prompts its use and critically oriented regarding the status quo in educational matters. These three factors constitute a perspective from which the assertion of a right to education has meaning. Those who share this broad perspective will have some grasp of the meaning intended by the use of that phrase. Those who do not may not understand or may unknowingly misunderstand the meaning.

The first factor shaping the perspective of those who use the phrase is a typically Western worldview. This includes a tendency to focus on the individual person as the basic epistemological and moral unit as well as a tendency to rely on contractual standards and on a strictly rational process in decision making.[11] As was discussed briefly in the preceding chapter, the idea of an individual right to education can only occur to one who has a prior notion of the individual as the basic social and moral building block, that is, as the one who voluntarily enters a social contract, legitimizes the resulting standards, and applies those standards scrupulously.

Those socialized into non-Western societies tend to have a somewhat different view of the individual and a somewhat different conception of the source of social and moral guidelines. In traditional Indian and Chinese societies, for example, the individual does not choose to enter and/or create a social unity. By virtue of genetic inheritance in India and family relationships in China, the individual is assigned a place in the broader society that transcends and outlives the individual.

Standards of conduct are not found in broadly based and abstract principles but in the exigencies of caste and family position.[12] From these perspectives, the notion of an individual right is likely to be out of place or misunderstood.

Those who use the phrase *right to education* are usually those who lack the power to unilaterally resolve the particular educational dilemma at hand. This is the second factor that shapes perspective, which is not to say that people who talk of a right to education are generally powerless. They may be quite powerful in other contexts and, in fact, are not without power within this context. They have the power to invoke the rhetoric of a right to education, for example, and to petition those who possess the authority for immediate change. However, they themselves cannot authorize such change.

For example, by invoking a right to education, the bishop of Pittsbury seeks financial relief for the parents whose children attend Catholic schools. The bishop is surely a powerful man in certain other contexts, but he does not have the power (money) to provide financial relief for those parents, nor does he have the power (political authority) to mandate tuition tax credits. He does have the power (publicity) to argue for the tax credit program in a public forum using the—itself powerful (persuasive)—rhetoric of a right to education.

If the bishop had the money (through a huge bequest to the Church, for example) to reduce parochial school tuition, he could simply do so. Then there would be no need for discussion about a right to education and it seems doubtful that the phrase would ever be mentioned. The phrase *right to education* only occurs when one seeks change in (some aspect of) the educational status quo but is powerless to effect that change.

This orientation toward change, toward criticism of the educational status quo, is the third feature typical of the perspective of those who use the phrase *right to education*. In contrast, those who seek to preserve or conserve the educational status quo may speak of education in terms of a privilege rather than in terms of a right. Return for a moment to the case of Danny. Imagine the contrast between Ms. Healey's point of view and that taken by the older special education teacher on the special education committee. Ms. Healey completed teacher training after the advent of Public Law 94-142.[13] She has been schooled in its provisions. More important, she has developed an attitude about the appropriate educational treatment of special students. It is an attitude that focuses on the specific needs of the individual, which includes social and emotional as well as intellectual needs. It is, in comparison to the tenor of traditional special education programs, an attitude of change. Ms. Healey considers her point of view reformist, which is reflected in the language that she uses to argue for specific policy decisions. It is the language of a right to education.

By contrast, the older special education teacher has a vested interest in more than twenty years of efforts to educate special children. She never learned about Public Law 94-142 in college; it did not exist when she went to college. Certainly she has learned about 94-142 and mainstreaming in seminars and in-service programs. However, she cannot help but be a little offended by the implication that quality special education has only existed since 1975. She knows in her heart that many fine teachers worked wonders with special children long before 94-142 was passed. She is in no hurry for change. She is not even convinced that change is necessary. Her point of view is quite conservative. You will probably never hear her talk about a student's right to education, although you may hear her say that each student is blessed enough to have the privilege of receiving some kind of education.

Because she lacks a perspective from which the notion of a right to education is an important concept, it is quite possible that the older special education teacher may misunderstand Ms. Healey's assertion or assume that she is simply incorrect when she says that Danny has a right to education. She may not realize that, from Ms. Healey's perspective, saying that Danny has a right to education is a statement with concrete and particular, as well as abstract, meaning. Its meaning is linked with Danny's personal needs and the importance of finding better ways to meet his needs. These are considerations with which the older special education teacher is also quite concerned. Yet there is a danger that the two teachers will not recognize their common concerns, that they will end up "talking past one another,"[14] because each teacher's perspective is based upon a different general concept.

A person's perspective is integrally linked with the concepts he or she uses and the meaning he or she intends with their use. Failure to account for that person's perspective (as grounded in his or her social conditions) may result in an inability to understand his or her speech. This does not imply that one can only understand those with exactly the same perspective. What it does imply is that one must be able to recognize *when* another's perspective is different and understand *how* it is different in order to comprehend the intended meaning. The extent to which we are limited in recognizing and understanding one another's perspectives is the extent to which we are limited in understanding one another's speech.

## Specific Perspective Variations

Those who use the phrase *right to education* typically have a perspective marked by a Western worldview, a particular situation of powerlessness regarding educational matters and the educational status quo. Those who do not share the perspective will comprehend the meaning of the phrase only to the extent that they are able to understand this perspective. Even among those who do share the general point of view—that it is meaningful and accurate to talk of one's right to education—there are more specific variations in perspectives that contribute to differences in the intended meaning of the phrase. We can get a better indication of the differences in its intended meaning by surveying examples of its usage. Where one speaker focuses on the development of a far-reaching educational system, another is concerned with access to a system already in place. Financial concerns are central to some speakers while questions of personal choice take precedence among others. The question may arise as to whether these variations constitute differences in perspective or simply differences in situational circumstances. The answer is not one or the other, but both. As our earlier discussion of Mannheim's conception of ideology suggests, one's perspective is dependent upon one's position. That is to say that one's perspective is tied to one's economic and political interests. We might reiterate Mannheim's view that claims of fact and value made from a particular perspective do not necessarily constitute lies or errors. For Mannheim, every claim of fact or value emerges from a particular perspective. Understanding demands that we take into account perspective when analyzing such claims.

We may best demonstrate the differences in meaning linked to perspective not by looking at different speakers in totally different contexts but by considering different speakers in the same general context. That is, we may look at each of our seven hypothetical situations, examining first the interests of the speaker already designated and then the interests of an alternate speaker who might echo the assertion of a right to education but who might intend an entirely different meaning.

When Danny's educational future was being decided, Ms. Healey argued, using the phrase *right to education*, for his placement in a regular classroom setting. Ms. Healey is a young special education teacher recently trained in the latest special education theory. She is committed to Public Law 94-142 and strongly favors mainstreaming. As a teacher, that is, as a supposed expert in matters such as Danny's education, she has a certain degree of authority and the power that accompanies participation in decision making. As a young teacher, she has a desire to demonstrate her knowledge and training as well as to appear progressive and professional. Her perspective may be cast as that of a "thinking professional."

Danny's mother might take a somewhat different point of view. Her concern is not how special children are to be handled; she cares only what happens to Danny. Her only expertise in this situation is that, as his mother, she is an expert on Danny. She has no power to decide what his educational future will be, however. Nor has she any real interest in educational theory or in the politics of the teaching profession. She is simply afraid that if Danny is mainstreamed into a regular classroom, he will be out of place and overwhelmed. Her perspective is that of a "caring mother."

Were the special education committee to invite her to sit in on their deliberations, we can imagine Danny's mother saying, "Yes, my boy has a right to education—to learn, not to be teased and tormented. Please don't put him in a regular classroom. It will be too much for him." The thinking professional holds the view that a regular classroom would be best for Danny; the caring mother holds a counterview. Each uses the phrase *right to education* to make her point.

The implication here is not that all caring mothers want their handicapped children in separate classrooms or that all thinking professionals favor mainstreaming. Nor is the implication that professionals do not care and mothers do not think. There is no simple equivalent in these matters. The point is that one's perspective focuses attention toward or away from certain features of the situation. Ms. Healey is considering educational theory in general; Danny's mother is thinking about Danny in particular. Ms. Healey ponders Danny's long-term educational development; his mother worries about his short-term emotional adjustment. All are worthy considerations. Yet it is difficult, if not impossible, to see clearly and weigh correctly all possible considerations. One's perspective causes certain factors to be seen in bright light and others to be obscured in shadow. What one sees, says, and means is closely tied to perspective.

This is not to say that Ms. Healey and Danny's mother could not possibly mean the same thing when using the phrase *right to education.* In fact, were Danny's mother also a special education teacher, or Ms. Healey also the mother of a handicapped child, it is quite possible that they might actually agree. However, this would be a special case in which the two people share the context-important elements of the same perspective. It is also quite possible that they might, informally or formally, agree to agree despite their different perspectives.

What we are trying to establish here is only that persons who have different perspectives on a given situation can use the same locution to convey very different meanings. The general implication is that we cannot assume constancy of meaning for the same concept used by two differently situated parties. We must examine perspective as a point for interpretation of meaning. With these thoughts in mind, let us look at additional examples of two differently situated people who use the phrase in the same context to mean something different.

Neighborhood Legal Services files a brief on behalf of the students and parents in the Riverside School District. The phrase *right to education* figures prominently in their petition for relief from the discriminatory practices of the state department of education. In this instance, the phrase is part of a request for the court's strictest level of scrutiny of the department's actions. It includes reference to a peculiar legal mechanism; that is, where a fundamental right is at stake, the court must examine thoroughly the actions of government.

In this case, the perspective of Neighborhood Legal Services is that of a technical expert in a technical field. Their language game is law, a game played in the courts. The involvement of Neighborhood Legal Services is more institutional than personal. Neighborhood Legal Services has an institutional commitment to, among other things, the legal representation of the underprivileged. However, rarely are the personal representatives of Neighborhood Legal Services among the underprivileged themselves. They become involved in the situation as experts with the knowledge and power of access to fight within and through the legal system. They become involved precisely because those directly affected lack the requisite knowledge and power of access.

Imagine the perspective of the president of a Riverside parents' group. Her point of view is that of an "activist parent" not a "technical expert." She lacks the systemic expertise of the Legal Services lawyer, but she carries a heavy load of personal commitment. Her commitment is not one spawned of general reflection about what is right but one of particular concrete educational needs.

Were this woman, after reading the legal brief at a parents' group meeting, to declare, "The lawyers of Legal Services have gone to court to fight for our children's right to education!" it is doubtful that she would be referring to the standard of scrutiny applied by the court. It is more likely that she would have in mind the concrete benefits of desegregation and more equitable school funding.

The above differences are not meant to suggest that Neighborhood Legal Services lawyers are unconcerned about the concrete remedies that may result from the suit nor that activist parents cannot comprehend or care about various legal twists and turns. It is important to remember, however, that one's perspective focuses one's attention either toward or away from certain aspects of the situation.

In fact we can, without difficulty, imagine plausible examples in each of the remaining cases that support the generalization that what one "sees" in a situation depends upon where one "stands." In one case, Mrs. Mason is an overextended housewife who equates the right to education with the transportation her daughter needs; her local (childless) borough council member is a campaigning politician who might interpret the right to education in light of the votes of those who are unaffected by the school closing and who do not wish to pay to transport a few students.

In another instance, the Special Commission on Human Rights takes the standpoint of a detached intelligentsia in calling for a common, general education for all, expressed in the phrase *right to education.* Were a member of the "uneducated working class" to make the same statement, he might be responding more to his own sense that education should yield dollars earned. A right to education, from his perspective, might more have to do with job training than with general education.

In yet another case, the state supreme court rules in *Indian Hills v. Manning* that education is a fundamental right. The implication of its statement is that governmental discrimination is subject to strict scrutiny. Consider the Indian Hills' attorney who made the same statement in oral argument before the court handed down a decision. Like the court, the attorney was referring to particular provisions in positive law. However, there's an important difference in meaning based in part on perspective. As the "legal authority," the court places the exclamation point of authority after its statement. As an "expert petitioner," the attorney can only put a question mark, that is, a request for confirmation, behind his statement.

The last two cases warrant further attention because they clearly illustrate perspectival differences that commonly affect the intended meaning of the phrase *right to education.* In the first, the bishop of Pittsbury expresses what is on his mind by using the phrase. The bishop speaks from the standpoint of a "partisan pastor," a Catholic leader concerned with Catholics and their identity as Catholics. There is a certain amount of influence and prestige that extends beyond the religious to the civil realm. A religious element—the Catholic school system over which the bishop presides—intrudes into a substantially civil matter. This school system is not only a key element in maintaining and strengthening the Catholic presence in Pittsbury, it is also a highly visible extension of the bishop's domain. It is easy to see why the bishop is concerned. If Catholic parents receive some financial relief from tuition costs, they may be more likely to send their children to Catholic schools. Two things will happen. More children will have greater exposure to Catholic culture and teachings. And, with more students, the school system will be stronger and more secure, thereby assuring the influence and prestige of the bishop. From the bishop's perspective, the right to education is linked with the interests of a particular group of individuals.

We can imagine a very different perspective from the editor of the Pittsbury Press, a man who also happens to be Catholic. However, his editorial position and his participation in decisions by an editorial board point him in the direction of the common good rather than in the direction of peculiarly Catholic interests. He seeks to be a "nonpartisan commentator," focused on broad community concerns and constitutional principles. He composes an editorial that reads, in part:

> The right to education, of value to us all, provides for a common education that can breed unity among us despite the diversity of our interests. It is in no way a passport to divisiveness. To suggest that tuition tax credits are mandated by the right to education is to pursue such divisiveness at public expense.

Two men, both Catholics, hold very different perspectives on the same matter that, because of their professional positions, result in attributing contradictory meanings to the same phrase. For the bishop, the focus is on the interests of a particular group of individuals. For the editor, the common good is the focus of attention. There is a different political ontology underlying each position, and the meaning of the phrase takes shape against that assumed background. This is one type of perspective difference that often affects the meaning of the phrase.

Another type of perspective difference concerns choice versus benefit. Representative Everhart views the right to education as a concept that involves personal choices. He uses the phrase to justify the Amish decision to opt out of the public educational system. A large part of Everhart's point of view may be linked to his role as a "campaigning politician" and the fact that many of his constituents are both Amish and registered voters. His perception of their wishes in this political matter lead him to focus attention on the elements of choice suggested by the phrase *right to education.*

However, the phrase also suggests the notion of a benefit, and it seems reasonable to suspect that the president of the teachers' union in the Eastern Elder School District would focus his attention on these. This union man takes a perspective colored by his constituents' concerns that include the strength of the public schools, jobs for union members, and a sincere commitment to the socializing services performed by the public schools and the educational benefits distributed by these schools. Such concerns are best served by effecting the compulsory attendance of the scores of Amish students.

Thus the union president tells his membership, "When Amish children do not claim their right to education, they lose out on the schooling they need, we lose out on jobs that we need, and our community loses out on the educated citizens it needs." The right to education that the Amish children refuse to claim is linked with benefits of various sorts. These benefits are the focus of attention of the union president, which affects his meaning.

## Summary and Comment

General observations have been supported by looking at additional examples, which are summarized here.

I do not mean to suggest a simple equivalent between a particular perspective and a particular intended meaning of the phrase *right to education*. What I do mean is that one's perspective is a critical factor where and how one's attention is focused in a given context.

In the preceding discussion of specific cases, we have discovered some elements of meaning suggested by the phrase *right to education*, elements that change according to the perspective of the speaker. First, one's perspective affects the level of abstraction on which the problem is formulated. One may frame a particular issue in terms that are practical, legal, theoretical, moral, or some combination thereof. Second, there may be a difference in the political ontology underlying the formulation of a problem. Whether one focuses on the interests of particular individuals—on what constitutes the common good—or whether one focuses on what is due all individuals as individuals is linked to the standpoint one adopts. Third, one may emphasize choice over benefit or vice versa depending upon one's point of view.

This list is not exhaustive. Rather it is meant to be suggestive. These are not the only meanings of the phrase, meanings that vary according to perspective, but they would certainly be at the heart of any list. As such, they offer a starting point.

This chapter has established the idea that the speaker's perspective is an important element to consider when seeking the meaning of the phrase. If two speakers with different perspectives can use the same phrase to intend different meanings, then we cannot assume a constancy of meaning without taking perspective into account.

This is the point where an analysis of the phrase that is not contextual tends to break down. Though acontextual analyses, such as those of Olafson and Feinberg discussed in chapter 3, offer solid insights into one possible interpretation, they rarely demonstrate an awareness of the perspective from which the analysis is carried out.

When, for example, Olafson talks about a right to education as a special right emerging from parental obligation toward a child, he does not preface his observations with an acknowledgment that he speaks from a practical standpoint, that is, the standpoint of an individualistic, law-oriented society in which parents do have some degree of education, and generally speaking, the capacity to fulfill that obligation. If one tries to apply Olafson's analysis to a context marked by a different perspective—such as interpreting the words of the hypothetical Special Commission of Human Rights about a right to education held by citizens of Third World countries—confusion would result. How can one think that a right to education stems from parental obligation in a context in which parents themselves are not educated and may not value education? Is there then no right to education? Is there a right to education only for those whose parents are educated and who value education?

Some would say that Olafson is simply incorrect in his analysis, that he has not yet uncovered the "root meaning" of the phrase. I would offer that Olafson has highlighted a valid aspect of the interpretation of the phrase from a particular perspective. His oversight is not acknowledging the limitations placed on his analysis by his intellectual, social, and political standpoint.

Every analysis is carried out from a particular perspective and, as a result, has limited accuracy and applicability. Yet few admit the limitations of perspective. The result is a situation where different linguistic analysts operating out of different perspectives offer different interpretations of the same phrase. Though all may be valid and valuable in context, an argument often ensues about which interpretation is "the correct" interpretation. There is a corollary, if implicit, argument about which perspective is "the correct" perspective for interpretation.

I wish to avoid the question of which interpretation is the true interpretation. Instead, I choose to operate from a conscious perspective that emphasizes human action in context. People do talk about a right to education. Other people must respond to that talk. In order to respond appropriately, one must interpret what is said and meant in that particular context. The speaker's perspective is one important element for interpretation.

## Notes

1 Hannah Arendt, *The Human Condition* (Garden City, N.Y.: Doubleday and Co., 1959), pp. 50–58.

2 Pitkin, *Wittgenstein and Justice*, p. 215.

3 Karl Mannheim, *Ideology and Utopia*, trans. Louis Wirth and Edward Shils (New York: Harcourt, Brace, Jovanovich, 1936).

4 Ibid., p. 29.

5 Ibid., p. 283.

6 Mannheim criticizes Marxism for adhering solely to what he calls a "particular conception of ideology," and proposes for use instead a "total conception of ideology." Mannheim says, "The former assumes that this or that interest is the cause of given lie or deception. The latter presupposes simply that there is a correspondence between a given social situation and a given perspective." Ibid., pp. 55–59. See also pp. 255–56.

7 Says Mannheim, "In the realm of the sociology of knowledge, we shall . . . avoid the use of the term 'ideology,' because of its moral connotation, and shall instead speak of the 'perspective' of a thinker. By this term we mean the subject's whole mode of conceiving things as determined by his historical and social setting." Ibid., p. 283.

8 Ibid., p. 272.

9 Ibid., p. 273.

10 Ibid.

11 Bozeman, "Roots," pp. 52–53.

12 Robert Ellwood, "The Individual and Society East and West," in *Rights and Responsibilities* (Los Angeles: University of Southern California Press, 1980), pp. 21–23.

[13] The Education For All Handicapped Children Act, Public Law 94-142, became law in 1975, with a full compliance target date of 1980. It provided for the education of all children in the least restrictive environment, individualized education programs for handicapped children, and due process requirements in deciding the educational fate of handicapped children. The philosophy of mainstreaming handicapped students rather than segregating them was not shared by all in-service teachers at that time.

[14] This is the phrase that Mannheim uses to point to the difficulty of communicating in a world where diverse perspectives abound. He explains "talking past one another" in this way, "Although they are more or less aware that the person with whom they are discussing the matter represents another group, they speak as if their differences were confined to the specific question at issue around which their present disagreement crystallized. They overlook the fact that their antagonist differs from them in his whole outlook, and not merely in his opinion about the point under discussion." *Ideology*, p. 280.

## 9

# Points for Interpretation and a Fresh Model for Making Decisions of Justice

The preceding five chapters constitute a contextual analysis of the phrase *right to education*. Each chapter examines a particular aspect of the phrase as used by people in everyday speech. Chapters 4 and 5 focus on the outside view of the phrase in speech, looking first at its uses, and then at the context conditions that govern such uses. Chapters 6, 7, and 8 view the phrase from inside, considering first the typical features of the phrase as a person intends its use; second, the personal experience that prompts one to use the phrase; and finally, the perspective of the speaker as it alters or limits his or her meaning.

We should not expect from a contextual analysis a set core meaning or even a formula for determining the meaning of the phrase. Rather, we should expect a set of points for interpretation, a series of items or questions to be considered when we are faced with the assertion of a right to education.

First,[1] is the phrase *right to education* used in an appropriate context such that it is capable of making sense to us? That is, is the phrase used under conditions that are social, political, public-rational, and educational? If so, we may continue to examine how it is used and what experience prompts its use. If not, we must question why the speaker is using the phrase inappropriately.

Second, is the phrase used as a slogan? Should it be interpreted literally or as a summary statement regarding a practical issue of justice? If it is to be interpreted as a summary statement, what other descriptive, prescriptive, or logical statements does it summarize?

Third, is the phrase used as a political weapon to advance the interests of an individual? With what particular educational state of affairs is the speaker dissatisfied? What is the supposedly objective standard of behavior or treatment that the speaker is implying? Could the speaker's dissatisfaction have been accurately and adequately expressed without using the terminology of the right to education?

Fourth, in what way is the use of the phrase self-involving? What does the speaker reveal about his or her needs, interests, or values? Or to what further action does the speaker commit him- or herself?

Fifth, what are the critical features of the situation that prompt the response of a right to education? In other words, to what combination of capabilities, possibilities, and responsibilities is the speaker responding?

Sixth, does the phrase express a particular rule? If so, what "game" is the speaker playing? What is the assumed common goal in the service of which the game is played?

Seventh, why does the speaker feel that his or her or another's individual integrity is threatened? What generates the speaker's expectation that a benefit is forthcoming? Is it a situation of clear harm, unequal treatment, a broken bargain, or another source?

Eighth, what are the historical, cultural, economic, and political perimeters of the speaker's situation? How does this perspective focus his or her attention and, as a result, his or her meaning?

This list forms the heart of the book, for it captures not only the results of the study but also its point of view and methodology. We have here not a single answer, but a list of questions. From a viewpoint directed toward human action in context, the interpretation of the phrase is an ongoing conversation rather than a logical analysis. The questions listed above prompt that ongoing conversation.

Two other observations about this list deserve further attention. Although the list seems fairly long, there is clearly overlapping among the various points. Questions three, six, and seven all relate to shared societal goals and expectations, for example. We must note also that the inside and outside aspects tend to come together. For instance, both an inside perspective and an outside one point to the political dimension of the phrase. Neither perspective for analysis can be reduced to the other, but the insights they yield are complementary.

There is a temptation to respond to the results of this analysis with a "so what?" attitude. One may ask what is new or important about the results. Is it not obvious that talk of a right to education is, for instance, self-involving and responsive? How does stating the obvious bring us any closer to understanding?

There is a half-truth in the assumption that these insights seem obviously accurate. The misconception is that because they are obvious, they are unimportant. On the contrary, it is because they are obvious that they are so easy to forget. We are bewitched by our own language through a process of reification. We know that talk of a right to education is self-involving and responsive, but we do not act as if it is. When faced with an assertion of a right to education, we do not interpret the concrete situation by asking what is at stake and for whom. Nor do we ask what set of circumstances prompts the assertion. In both philosophical circles and practical situations, we tend to analyze abstract claims by looking at words, not at contexts. The preceding analysis diverts attention back to context.

The remainder of this chapter explores two questions posed, at least implicitly, in the course of our contextual analysis. The first asks how the phrase can so clearly represent the interests of the individual while being, at the same time, so dependent upon the interests of society. The second questions whether the use of the phrase helps resolve problems of justice.

## Individual vs. Society: Conceptual Tension

The phrase *right to education* is used in social situations to preserve the integrity of the individual. It relies for its meaning upon both the interests and integrity of the individual and the interests and integrity of society,[2] even though it is used in situations where the two are supposedly in conflict. The phrase is an example of self-involving (personal) language used in public-rational (impersonal) situations. Take away either the individual or the societal and the phrase has no meaning. Take away either the personal or the impersonal and the phrase is left barren.

These comments illustrate clearly a phenomenon of language that Hannah Pitkin discusses in *Wittgenstein and Justice*. Pitkin suggests that various cases involving the use of a word or phrase may have contradictory elements.[3] She maintains that this clearly follows from the Wittgensteinian theses that

> words are not, or not merely, labels, but often signals, that language is learned in instances of use, and consequently meaning is compounded out of instances of use, and that meaning is context-dependent, that meaning and sense need to be completed by context.[4]

These apparently contradictory elements are not problematic until a human desire for order and clarity in language sends one looking for the single core or essence of its meaning. For example, one wants to understand a right to education in relation to the individual or in relation to society but not in relation to both. One wants to understand a right to education as either personal or impersonal but not both. More practically, one wants to have the right to education refer to Danny's benefit of education or to the Amish choice regarding education but not to both. When one cannot dismiss through analysis one or the other of the contradictory elements, conceptual puzzlement results.[5]

Pitkin maintains that some inconsistencies may actually be essential to a concept's function. This is very much the case with the phrase *right to education.*

The phrase appears at the juncture of the individual and society. Every instance of its use represents both individual interests and societal values. It seems reasonable to suggest that the term's broad function is precisely to provide (one kind of) a dialectical link between the (concept of) individual and the (concept of) society.

Daniel Maguire, in A *New American Justice,* makes just this observation. He maintains that the individual-society referent in rights talk generally is not a contradiction but is crucial to the use of the term. In Maguire's words, "Rights language is in fact largely concerned with the tension between what is owed to the common good and what the individual can insist on as his right even in the face of the public domain."[6]

Hannah Pitkin reminds us that the tension between the individual and society is a conceptual tension, because "individual" and "society" are, first of all, concepts. "We are tempted to suppose that society is a mere concept," says Pitkin, "while individuals are really real because individual persons have tangible, visible physical bodies."[7] However, this supposition is unwarranted. Both concepts are generated by different perspectives but based on a single reality. The customary distinction between the individual self and the larger whole to which the self belongs does not constitute a fixed or mutually exclusive dichotomy. Pitkin maintains that society is not outside the individual confronting him or her but part of who the individual is.

The right to education is one of a host of concepts that acknowledge the link between the individual and society. If there are contradictions in the use of the phrase, the contradictions may stem from the assumed conceptualization of individual and society rather than from a problem in human living.

## A Fresh Look at Making the Decisions of Justice

In chapter 5, I raised the issue of whether the phrase *right to education* was the most appropriate terminology to be used in contexts that were social, political, public-rational, and educational. The answer was yes if the purpose of political discussion is to use every possible weapon to win the argument and no if, as Pitkin maintains, the purpose of political discussion is to resolve a conflict while preserving the "we" that is the context of the conflict. This points to a broader question about the right to education, the purposes of political discussion, and the achievement of justice. Does the use of the phrase *right to education* help to solve the problems of justice?

The answer is often no. As noted earlier, Maguire cited the "chip on the shoulder and the frown on the brow"[8] of those who use talk about individual rights, implying that resolution of the issue is not likely. Carol Gilligan also points out the limitations of discussing individual rights. In a 1982 address to the Philosophy of Education Society,[9] Gilligan talks about "the language of rights that protects separation." She calls for a "new perspective joining present concerns with justice and with truth in the abstract to a concern with care and loyalty to persons, extending the focus on reciprocity and rights to an understanding of responsiveness and responsibility in relationships."[10]

What the preceding contextual analysis demonstrates, however, is that both concerns of abstract standards and concrete caring, of reciprocity and responsiveness, are present in situations where the phrase *right to education* is used. If we attend to the context of its usage, the phrase can and does convey the multidimensional moral meaning that Gilligan suggests.

I am not arguing that we should or should not use the phrase *right to education.* I am only acknowledging that we do use it. If we are to understand its use, we must pay more attention to the context of its usage and less to its denotative meaning. This is not to say that we can ignore the measure of meaning inherent in the expression. The phrase denotes a rule or standard of educational treatment. And we do respond to the assertion of the right to education as if it were a rule or standard; but we respond as well to the political circumstances, personal needs, individual integrity, self-involvement, and perspective of ourselves and others. We ask: "What is the appropriate response?" if we are to discover the just thing to do.

Admittedly, this conception of decision making for justice is quite different from the two models that have dominated the Western understanding of the human being as moral agent. It is far more common to encounter a defense of either a teleological or a deontological model for ethical decision making.[11]

The Aristotelian or teleological model focuses on the means-end aspect of human deliberation as the paradigm for all ethical decisions. This model assumes that when a person wishes to determine the just thing to do, that person fixes (ethical) goal(s), considers possible means, and asks: "Which means best achieves this goal?" This is the understanding that supports utilitarian theory.

The Kantian or deontological model selects, instead, the discover-obey feature of human action as the paradigm for ethical decisions. This model assumes that one can only determine the just thing to do by finding the rule appropriate to that situation and obeying it scrupulously. What is the relevant rule that should be followed? Not surprisingly, a deontological perspective is usually more hospitable to the idea of individual rights (as rules) than a teleological model.

H. Richard Niebuhr has criticized both the teleological and deontological models for their inability to account for human intentionality and suggests, as an alternative, a response model of ethical decision making.[12] Niebuhr does not claim that this is the way we do or should make every single decision, but he does maintain that an interpret-respond structure more closely follows the ethical process and, in fact, the pattern of all human activity. In Niebuhr's model, the question that yields the just thing to do is "What is the 'fitting' response?"

A response model for ethical decision making includes a four-step framework based on (1) prior action (examining why a particular action elicits an accompanying response); (2) interpretation (becoming aware of the meaning given to the action or event by the participants); (3) anticipation (predicting the results of, or subsequent response to, each possible response); all of which take place in a (4) social context (acknowledging the community of agents to which a response is made). Niebuhr sums up:

> The idea or pattern of responsibility, then, may summarily and abstractly be defined as the idea of an agent's action as response to an action upon him, in accordance with his interpretation of the latter action and with his expectation of response to his response; and all of this is in a continuing community of agents.[13]

This model for ethical decision making does not exclude either goals or rules. As one interprets what is happening or predicts how others may respond, one does so with an awareness of societal and individual goals, with a respect for societal and individual rules. A response model for ethical decision making allows for such considerations. At the same time, it acknowledges that we rarely act upon goals or rules in a vacuum. It further acknowledges that goals and rules are themselves shaped by social context. Making an ethical decision, pursuing the just action, is not simply a matter of obeying a rule or achieving a goal. It is a matter of responding appropriately to a complex life situation.

Niebuhr's model for ethical decision making fits remarkably well with John Dewey's theory of ethical action articulated in the 1932 revision of *Ethics*.[14] There Dewey crystallizes what is present in diluted form in the first edition.

Dewey delineates a permanent, three-part framework for the ethical domain, a framework of "moral conceptions and processes [that] grow naturally out of the very conditions of human life."[15] (1) There are ever-present human desires, wants, and needs demanding satisfaction that affect our ethical choices. These correspond to the traditional notion of an ethics of the Good. (2) There is the unavoidability of associated living—the fact that we live inevitably in relationship—with the rights, duties, and obligations that this entails and that correspond to a traditional notion of an ethics of the Right. (3) There are always phenomena of approval and disapproval, sympathy and resentment accompanying human action. This corresponds with the traditional notion of Virtue as the preeminent ethical characteristic.[16]

The innovation in Dewey's ethical schema is that not one of these features is preeminent. Rather, all are present and relevant at any moment of ethical decision making and all are subject to a process of inquiry. "(T)hey are to be used as tools of analysis of present situations, suggesting points to be looked into and hypotheses to be tried."[17] For Dewey, decision making founded on inquiry is the crux of ethics.

Like Niebuhr, Dewey calls for responsibility in ethics and, like Niebuhr, Dewey's responsibility implies not retrospective blame, but the prospective ability to respond ethically, to act in the here and now.[18] Such is the challenge when one is faced with the assertion of a right to education. If one is to respond appropriately, one must understand. Contextual analysis is one tool that expands understanding.

Perhaps the clearest implication of relying on contextual analysis to interpret concepts such as a right to education is that neither the means-end nor the discover-obey framework for ethical decision making is as helpful as has been thought. Neither the teleological nor deontological models can encompass or envelop the fruits of this kind of analysis. Contextual analysis is serviceable rather than intellectually elegant, that is, simple, classic, and beautiful in its simplicity. It enlarges, yet focuses the decision-making situation, rather than telescoping the situation into a narrow view that cannot convey the full measure of understanding.

Niebuhr's response model of ethical decision making and Dewey's theory of ethical action are both structured, but open-ended. I contend that this analysis of the phrase and the Niebuhr/Dewey view of the ethical enterprise confirm each other as useful tools in determining how to act ethically here and now.

This is not to say that the response model for ethical decision making will solve any concrete ethical problem. Only persons, as agents, solve problems. Nor is it to say that a contextual analysis of the phrase will clearly reveal the correct course of action regarding a particular ethical issue. The correct course of action is not revealed; rather it is constructed based upon interpretation of the situation, a consideration of relevant values, and anticipation of probable consequences.

A contextual analysis of the concept right to education is an interpretive moment in Niebuhr's scheme of ethical decision making. It is part and parcel of Dewey's "discovery" of what is good and right.[19] The problem is clarified and the relevant values articulated. A human agent then chooses the "fitting" response; that is, he or she chooses the just thing to do under the circumstances.

The clear strength of both contextual analysis and an ethics of responsibility is that each allows—in fact, encourages—the consideration of political and legal factors in the interpretation of supposedly ethical concepts and the resolution of supposedly ethical issues. Power and societal constraints are perimeters within the contexts in which ethical concepts are used and ethical decisions are made. Wittgenstein, Niebuhr, and Dewey allow us to account for these factors.

## Right to Education: Heuristic Device

What is the value then of a concept such as right to education? If the philosopher's ethical project is, as Niebuhr and Dewey suggest, learning how to determine the "fitting" response rather than articulating the "good life" and how to live it or uncovering the "right rule" and how to follow it, what theoretical understanding can we make of a concept such as right to education? The phrase can best be viewed as a heuristic device, a directional signal to move us toward, without ever actually signifying, the just action in educational situations. Because the use of the phrase is rooted in both individual needs and societal rules, it can serve as a reminder of—even a symbol for—a just response that encompasses both these concerns.

Dewey has, perhaps, come closest to understanding individual rights from a heuristic perspective. It is not surprising that the pragmatist Dewey did not rely on individual rights as the cornerstone of his ethical theory. He did not elucidate anything approaching a theory of rights, for example. However, in both editions of *Ethics*, Dewey does discuss individual rights as an important ethical concept, and he does so in a contextual, relational manner.

Dewey acknowledges the view that definitions of rights present a minimum limit of morality that is not to be crossed. But, he maintains, the concept of rights throws "little light on the positive capacities and responsibilities of those who are socially-minded."[20]

He later discusses, in some detail, the character of the practice of claiming and urges us to recognize that "the exercise of claims is as natural as anything else in a world in which persons are not isolated from one another but live in constant association and interaction." People owe something to one another because of the relationships that exist between and among them. The authoritative force of claims, what we often refer to as rights of one kind or another, "springs from the very nature of the relation that binds people together." It is not the will of God, nor the political state (Hobbes), nor the law of practical reason (Kant) that is at the source of our positing rights. It is the interdependence of human beings. This interdependence does not generate specifiable "Rights," however. Rather, it results in a sense of the "Right" as an independent moral category. Any particular claim is always open to examination and criticism, reflected against what is thought to be Good and what is considered Virtue.[21]

For Dewey, to talk theoretically about a right to education is not to define or legitimize a playing piece in a logical game that results in "Justice in Education." Rather, talking theoretically about a right to education is talking suggestively about positive capacities and responsibilities, about social and institutional realities, and about the stake that the community has in an individual's education as well as the stake that the individual has in the community's attitude toward, and provision of, educational opportunities.

If Dewey's "theoretical" sounds quite "practical," this should come as no surprise to those who know the rest of his work. Dewey blurs the line, if it ever existed, between the theoretical and the practical. So it is this type of contextual analysis that yields a series of points for interpretation and that is, to some extent, general and theoretical; yet, when applied, is eminently practical.

Because of the length and breadth of the interpretive list, there is a feeling that to interpret the meaning of the phrase *right to education* one must conduct an abbreviated social history, at least in matters educational, of those involved in the assertion of the right. I do not want to avoid this conclusion. On the contrary, I welcome it.

Practically speaking, it is not necessary to carry out a full-blown interpretation of the phrase every time it is heard. Quite often there is a common understanding that allows the participants to resolve the issue at hand. A more precise meaning is not needed. However, when the problem is intractable, the language of the right to education may mask rather than reveal a solution. In that case, a thorough interpretation—that is, a social history of the participants and their educational situation—is both vital and necessary. This interpretation is a critical aspect of the dialogue confronting justice in education.

## Notes

[1] This list does not follow exactly the order of the preceding analysis because it seems more reasonable to begin with the question of whether the phrase is used in an appropriate context and, therefore, is capable of making sense. If it is not used in what has heretofore been recognized as an appropriate context, then the following points for interpretation may be themselves inappropriate, or even moot.

[2] Much social theorizing operates on the assumption that individuals and society have separate needs and interests and that a theory cannot emphasize the needs and interests of both the individual and society equally. Witness the premier social theories of the era—classic liberalism and socialism.

The former begins with the individual so that identification of and concern for social needs and interests is dependent upon the concern for individual needs and interests. The latter begins with society and, thus, the opposite is true.

[3] Pitkin, *Wittgenstein and Justice*, p. 85.

[4] Ibid.

[5] Ibid., p. 87. A near-classic case of conceptual puzzlement is the ongoing debate in philosophical circles over the mandatory nature of a right to education. If, as some theorists assert, the root meaning of a right involves claims and/or respected choices, then how is it that one cannot *choose not* to claim or exercise the right to education? See, for example, Martin Golding, "Toward a Theory of Human Rights," *The Monist* 52 (1968): 540–52 and Joel Feinberg, "Voluntary Euthanasia and the Inalienable Right to Life," in *Rights, Justice and the Bounds of Liberty* (Princeton: Princeton University Press, 1980), pp. 221–51.

[6] Maguire, *New Justice*, p. 96.

[7] Pitkin, *Wittgenstein and Justice*, p. 195.

[8] Maguire, *New Justice*, p. 72.

[9] Carol Gilligan, "New Maps of Development: New Visions of Education," in *Philosophy of Education 1982: Proceedings of the Thirty-Eighth Annual Meeting of the Philosophy of Education Society* (Normal, Ill.: Philosophy of Education Society, 1982), p. 59.

[10] Ibid., p. 61.

[11] H. Richard Niebuhr, in *The Responsible Self*, sketches these two models of ethical decision making that have long dominated Western thinking. (New York: Harper and Row, 1963), pp. 47–50.

[12] Niebuhr, *Self*, pp. 47–68.

[13] Ibid., p. 65.

[14] John Dewey and James Tufts, *Ethics* (New York: H. Holt and Co., 1932).

[15] Ibid., p. 308.

[16] Ibid.

[17] Ibid., pp. 329–30.

[18] Ibid., pp. 303–05.

19 Dewey, *Ethics*, 1932, p. 317.

20 John Dewey and James H. Tufts, *Ethics* (New York: H. Holt and Co., 1908), p. 439.

21 Dewey, *Ethics*, 1932, pp. 218–19.

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